VOL. 47 (2d Series) JUNE 14, 1974 No. 1

FEDERAL COMMUNICATIONS COMMISSION REPORTS
(47 F.C.C. 2d)

Decisions, Reports, Public Notices, and Other Documents of the Federal Communications Commission of the United States

VOLUME 47 (2d Series)

Pages 1 to 148

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

RICHARD E. WILEY, Chairman
ROBERT E. LEE
CHARLOTTE T. REID
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UNITED STATES GOVERNMENT PRINTING OFFICE • WASHINGTON, D.C.

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Washington, D.C. 20402 - on a subscription basis

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
AMERICAN TELEVISION AND COMMUNICATIONS CORP. (KZW-67), NEODESHA, KANS.	CMPCAR-220
AMERICAN TELEVISION AND COMMUNICATIONS CORP. (WRC-23), GARNETT, KANS.	CMPCAR-221
AMERICAN TELEVISION AND COMMUNICATIONS CORP. (WRC-24), IOLA, KANS.	CMPCAR-222
AMERICAN TELEVISION AND COMMUNICATIONS CORP. (WRC-25), CHANUTE, KANS.	CMPCAR-223
For Construction Permits in the Cable Television Relay Service	

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 22, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. On March 18, 1974, Southeast Kansas Microwave, Inc., a point-to-point microwave common carrier, filed a "Petition for Stay" and "Petition for Reconsideration" directed against the Commission's opinion in *American Television and Communications Corporation*, FCC 74-127, —— FCC 2d ——, which again authorized ATC to construct four cable television relay stations to serve its cable television systems at Chanute, Parsons, Neodesha, and Independence, Kansas.[1] ATC filed its "Opposition to Petition for Reconsideration" on April 1, 1974, and the "Reply of Southeast Kansas Microwave" was filed April 10, 1974. Thereafter, on April 17, 1974, Southeast Kansas supplemented its reply with additional material. In turn, ATC responded on April 19, 1974, with a "Motion for Leave to File" and "Comments." All of these matters have been considered in reaching our decision.

2. Southeast Kansas makes basically two arguments: that ATC's conduct in electing to construct its own CARS stations—rather than continuing to purchase service from Southeast—somehow constituted anti-competitive conduct which this Commission should prevent since it may drive Southeast Kansas out of business, and that ATC directed Southeast Kansas to remove equipment from a tower it owns at Chanute, Kansas, which may interfere with its ability to provide service to other customers. These contentions may be answered summarily: we

[1] These stations were first authorized in *American Television and Communications Corporation*, FCC 73-191, 40 FCC 2d 894, which Southeast Kansas appealed to the United States Court of Appeals for the District of Columbia Circuit; thereafter, technical deficiencies were discovered in the permits which had been granted. Accordingly, remand of the cases was sought and obtained from the Court without a decision on the merits. The remanded applications were again dealt with in the action here challenged.

addressed the anti-competitive issue in our decision in *American Television and Communications Corporation*, FCC 73–191, 40 FCC 2d 894, and do not believe it necessary to address it again in this proceeding.[2] Southeast Kansas has not related action on these applications to the dispute over the Chanute tower; moreover, we note that Southeast Kansas litigated this matter in the Kansas courts, and presumably is able to defend its asserted rights in that forum. Accordingly, the "Petition for Reconsideration" will be denied, and the "Petition for Stay" will be dismissed as moot.

In view of the foregoing, the Commission finds that reconsideration of its opinion in *American Television and Communications Corporation*, FCC 74–127, —— FCC 2d ——, would not serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the "Petition for Stay" filed March 18, 1974, by Southeast Kansas Microwave, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That the "Petition for Reconsideration" filed March 18, 1974, by Southeast Kansas Microwave, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] We noted in *American Television and Communications Corporation*, FCC 74–127, —— FCC 2d ——, that "Should Southeastern [sic] Kansas again appeal, it will of course be entitled to reargue its earlier objections * * *." Clearly, however, we referred to an appeal to the Court of Appeals rather than another proceeding before the Commission.

FCC 74–498

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
BELINGTON TV CABLE CORP., BELINGTON, W. VA.	CSR–442 WV074
WEBSTER TV CABLE CO., WEBSTER SPRINGS, W. VA.	CSR–444 WV190
Request for Special Relief	

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 23, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On July 24, 1973, Belington TV Cable Corporation, operator of a cable television system at Belington, West Virginia, and Webster TV Cable Company, operator of a cable television system at Webster Springs, West Virginia, filed requests for waiver (CSR–442, 444) of Sections 76.91(a) and 76.93(a) of the Commission's Rules,[1] seeking authorization not to provide network program exclusivity protection to Television Station WDTV (CBS), Weston, West Virginia. On November 15, 1973, Withers Broadcasting Company of West Virginia, licensee of Television Station WDTV, Weston, West Virginia, filed an "Opposition to Petition for Waiver and Request for Consolidation."

2. Belington is located in the Weston and Clarksburg, West Virginia smaller television markets. Webster Springs is located outside of all television markets. Belington TV and Webster TV operate twelve-channel cable television systems. Belington TV carries the following signals:

KDKA–TV (CBS, channel 2), Pittsburgh, Pennsylvania
WTAE–TV (ABC, channel 4), Pittsburgh, Pennsylvania
WDTV (CBS, channel 5), Weston, West Virginia
WTRF–TV (NBC, channel 7), Wheeling, West Virginia
WWVU (educational, channel 24), Morgantown, West Virginia
WSTV (CBS/ABC, channel 9), Steubenville, Ohio

[1] Section 76.91(a) provides: "(a) Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95."

Section 76.93(a) provides: "(a) Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday–Saturday) during which exclusivity is sought."

WIIC–TV (NBC, channel 11), Pittsburgh, Pennsylvania
WBOY–TV (NBC, channel 12), Clarksburg, West Virginia
WQED (educational, channel 13), Pittsburgh, Pennsylvania

Webster TV carries the following signals:

WSAZ–TV (NBC, channel 3), Huntington, West Virginia
WOAY–TV (ABC, channel 4), Oak Hill, West Virginia
WDTV (CBS, channel 5), Weston, West Virginia
WMUL–TV (educational, channel 33), Huntington, West Virginia
WCHS–TV (CBS, channel 8), Charleston, West Virginia
WSWP–TV (educational, channel 9), Grandview, West Virginia
WBOY–TV (NBC, channel 12), Clarksburg, West Virginia
WHTN–TV (ABC, channel 13), Huntington, West Virginia

WDTV is a CBS affiliate and places a predicted Grade A contour over Belington and a predicted Grade B contour over Webster Springs. Belington TV carries WCHS–TV and KDKA–TV, CBS affiliates which do not place predicted Grade B contours over its community. Webster TV carries WCHS–TV, which does not place a predicted Grade B contour over its community. Withers Broadcasting is seeking network exclusivity with respect to all these CBS affiliates.

3. Belington TV and Webster TV argue that they should not be required to accord WDTV exclusivity, on the grounds that WDTV transmits a low-quality signal, that WDTV has no financial need for exclusivity protection, that subscribers would prefer to view CBS programming on more than one channel, and that switching equipment often is inaccessible during the winter. We reject these arguments for the following reasons.

4. Belington TV and Webster TV offer no documentation in support of their contentions. Accordingly, it is impossible to give them any weight. Their argument that WDTV's signal is so poor that it cannot be delivered properly to their subscribers is very tenuous, since several other CBS affiliates which they carry are distant signals which fail to place even a predicted Grade B contour over their communities. Similarly, they have failed to show that exclusivity protection is not necessary for WDTV or is in any way disruptive to their subscribers' established viewing habits. And they have submitted no documentation of their claim that switching equipment is inaccessible during the winter. As we recently noted in *Tygart Valley Cable Corporation*, FCC 73–1178, 43 FCC 2d 966, such unsubstantiated arguments cannot justify a waiver of our rules.

In view of the foregoing, the Commission finds that a grant of the requested waiver of Section 76.91 and 76.93 of the Commission's Rules would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the petitions for waiver (CSR–442, 444) filed July 24, 1973, by Belington TV Cable Corporation and Webster TV Cable Corporation ARE DENIED.

IT IS FURTHER ORDERED, That Belington TV Cable Corporation and Webster TV Cable Corporation ARE DIRECTED to comply with the requirements of Sections 76.91 and 76.93 of the Commission's Rules on their cable television systems at Belington and Webster Springs, West Virginia, within thirty (30) days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74R-190

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of BREEZE 94, INC., MARATHON, FLA.	Docket No. 19935 File No. BPH-8192
WHOO RADIO, INC., MARATHON, FLA. For Construction Permits	Docket No. 19936 File No. BPH-8243

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 23, 1974)

BY THE REVIEW BOARD:

1. This proceeding, involving the mutually exclusive applications of Breeze 94, Inc. (Breeze) and WHOO Radio, Inc. (WHOO Radio) for construction permits for a new FM broadcast station at Marathon, Florida, to be operated on Channel 232A, was designated for hearing by Commission Order, 39 FR 7619, published February 27, 1974. Presently before the Review Board is a petition to enlarge issues, filed March 14, 1974, by WHOO Radio, seeking the addition of financial and staffing issues against Breeze.[1]

FINANCIAL QUALIFICATIONS

2. In support of its request to add issues inquiring into Breeze's cost estimates and sufficiency of funds, petitioner alleges that Breeze has failed to provide for or has not accurately estimated various first year operating and construction costs, including contingencies, installation and construction of buildings, office equipment, record and tape libraries, cost of electric power and telephone, salaries and travel expenses. Petitioner further points out that Breeze has deferred loan payments and tower acquisition costs until after the first year and that a margin of only approximately $2,000 exists between the total first year costs and the total funds available. In WHOO Radio's opinion, appropriate issues are therefore warranted. The Broadcast Bureau notes, in its comments, that WHOO Radio has not submitted any affidavits to support its allegations, as required by Section 1.229(c) of the Commission's Rules, and that WHOO Radio has not succeeded in making a *prima facie* showing that Breeze's estimated first year costs are unrealistic. However, the Bureau does question the lease arrangement between Breeze and the lessor of its proposed studio site according to which the lessor will furnish utilities as part of the $150 monthly rental fee. In the absence of a satisfactory explanation from

[1] Other pleadings before the Board for consideration are: (a) comments, filed March 27, 1974, by the Broadcast Bureau; (2) opposition, filed April 12, 1974, by Breeze 94; and (c) reply, filed April 29, 1974, by WHOO Radio.

Breeze, the Bureau suggests, a limited issue should be specified, inquiring into Breeze's reliance upon the lessor to pay transmitter power costs.

3. In conjunction with its opposition, Breeze submits a copy of an amendment to its application.[2] The amendment shows an increase of $10,000 in the funds available to Breeze, bringing the total amount of cash and committed credit (less set-offs for principal and/or interest payments due the first year) to $61,609.54.[3] Breeze contends that this capital is sufficient to meet its projected construction costs and first year operating expenses totalling $53,275.75[4] without any reliance upon station revenues. According to Breeze, the sums allocated for remodeling and construction of the buildings are adequate because Mr. John F. Thacker, president of Breeze, will personally do the work with the assistance of several friends who are tradesmen at no cost to the applicant and because Breeze already has on hand much of the necessary equipment. Breeze further explains that the lessor of its studio-transmitter site, Mr. Thomas J. Dowdell, III, is an officer, director and 10% shareholder in Breeze and, for this reason, has agreed to charge only $150 per month rent including all utilities. Moreover, asserts Breeze, the Florida Keys Electric Cooperative has advised Mr. Thacker that the monthly electric bill for the operation of the proposed solid state transmitter will approximate $79.79.[5] In response to the remaining allegations of WHOO Radio, Breeze contends that it has set aside $260 for records and does not plan to use tapes; that almost all telephone calls will be local or made on a toll-free basis; that substantial travel expenses are not anticipated; and that the sums allocated for employee salaries are in line with wage levels in the area but, in any event, there will be a financial surplus should it be necessary to pay more.

4. WHOO Radio argues, in reply, that the opposition and amendment, filed by Breeze, serve to reinforce the need for a sufficiency of funds issue. The cushion of approximately $8,000 in available funds has been achieved by deferring interest and principal payments on loans and by deferring payment of the $2,000 cost of the tower until after the first year of operation, WHOO Radio contends. WHOO Radio further maintains that negligible sums have been allocated for remodeling and installing equipment and there are no supporting affidavits to guarantee that "free labor" will be available; that a negligible sum of $25 per month is allocated for telephone service; and that there is no budget for travel expense. In addition, WHOO Radio questions Breeze's reliance upon a minority stockholder to underwrite utility costs and the allocation of a total salary budget of $17,600 for

[2] Breeze's amendment, filed April 12, 1974, was accepted by the Administrative Law Judge in an Order, FCC 74M–474, released April 30, 1974.

[3] Included in this sum are: (a) existing capital, $10,291.54; (b) net total available from loans, $40,000; and (c) net deferred credit available, $11,318. A $10,000 increase in the amount available through loans is confirmed by a letter from the president of the First National Bank of Ceredo, in Ceredo, West Virginia, indicating the bank's willingness to extend credit up to $20,000.

[4] Breeze estimates its total construction costs at $22,565.50 and its total first year operating expenses at $30,710.25. An itemization of the first year operating expenses is included with the amendment.

[5] No documentation is offered to support this assertion.

four full-time employees and $3,841 [6] for two part-time employees working an aggregate of 33 hours per week.

5. WHOO Radio's request to add financial issues against Breeze will be denied. The Review Board will not add a financial issue inquiring into an applicant's cost estimates unless the petitioner's allegations are supported by affidavits of a person or persons having personal knowledge thereof, as stipulated by Rule 1.229(c), or the applicant's estimates are unreasonable on their face. *California Stereo, Inc.*, 39 FCC 2d 401, 402–403, 26 RR 2d 887, 890 (1973). In the instant case, petitioner has made no attempt to supply supporting affidavits. Specifically, the allegations concerning salary expenses are speculative and lack substantiation. Furthermore, the first year cost estimates in Breeze's amended application are not unreasonable on their face, and Breeze has adequately explained any questions raised by petitioner, including the monthly rental charges for its proposed facility.[7] See *Eastern Broadcasting Corp.*, 28 FCC 2d 28, 21 RR 2d 417 (1971). With regard to Breeze's deferral of certain expenses beyond the first year of operation, the Board notes that such deferral does not mandate enlargement of issues. The Board has previously recognized the practice of deferring bank loan repayments until the second year of operation. *Radio Nevada*, FCC 68R–496, 14 RR 2d 796 (1968), review denied FCC 72–126, released February 9, 1972; *Mt. Carmel Broadcasting Co.*, 8 FCC 2d 1033, 10 RR 2d 961 (1967). See also *Ultravision Broadcasting Co.* 1 FCC 2d 544, 547, 5 RR 2d 343, 347–348 (1965). Although Breeke's net deferred payments nor its debt-to-asset ratio justify an the first year, Breeze is not relying solely on loans and deferred credit to finance its operation. Rather, Breeze has shown that it has over $10,000 in existing capital, as well as a surplus of $8,333.79 in available funds, as evidenced by the amended application. Neither the amount of Breeze's net deferred payments nor its debt-to-asset ratio justify an inquiry into second year financing. *Cf. Robert Cowan Wagner*, 38 FCC 2d 1187, 26 RR 2d 429 (1973). Under these circumstances, the Board sees no reason to add the requested issues.

STAFF ADEQUACY

6. WHOO Radio's request for a staff adequacy issue is premised on Breeze's original proposal to operate 126 hours per week with a staff of four full-time employees. Petitioner asserts that Breeze must present a more specific showing as to its deployment of the four man staff. However, petitioner's allegations have been effectively answered by Breeze's amended application which provides for the additional services of two part-time employees and indicates the number of hours

[6] Breeze has actually allocated $3,861 in salaries for the two part-time employees.

[7] In its petition to enlarge, WHOO Radio cites the following cases in support of its request to add a financial issue: *Radio Geneva, Inc.*, 42 FCC 2d 254, 27 RR 2d 1680 (1973); *Lafourche Valley Enterprises, Inc.*, 30 FCC 2d 539, 22 RR 2d 228 (1971); *Edward G. Atsinger, III*, 30 FCC 2d 493, 22 RR 2d 236 (1971); *Dearborn County Broadcasters*, 15 FCC 2d 247, 14 RR 2d 747 (1968). In the Board's opinion, these cases are not relevant to the instant case in light of Breeze's amendment providing for a surplus of funds in an amount over $8,000.

per week each of the four full-time and two part-time employees will work both on and off the air. No affidavits have been presented by WHOO Radio, pursuant to Rule 1.229(c), to challenge Breeze's proposal. In fact, in its reply, filed April 29, 1974, WHOO Radio fails to discuss the adequacy of Breeze's amended staffing schedule. Therefore, the Board believes that a staff adequacy issue is unwarranted.

7. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed March 14, 1974, by WHOO Radio, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-528

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re CABLE TELEVISION OF ROCHESTER, INC., ROCHESTER, N.Y. Requests for Orders To Show Cause and Immediate Stay	SR-127106 CSR-173 (NY370)

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 31, 1974)

BY THE COMMISSION:

1. On December 9, 1971, Rust Craft Broadcasting of New York, Inc., licensee of Station WROC-TV (NBC), Rochester, New York, filed a "Petition for Stay and Other Special Relief" (SR-127106) seeking an order staying carriage of WBEN-TV (CBS), WGR-TV (NBC), and WKBW-TV (ABC), Buffalo, New York, and WSYR-TV (NBC), Syracuse, New York, by Cable Television of Rochester, operator of a cable television system at Rochester, New York. On December 15, 1971, WHEC, Inc., licensee of Station WHEC-TV (CBS), Rochester, New York, filed "Comments in Support of 'Petition for Stay and Other Special Relief.'" On January 10, 1972, Cable Television filed an "Opposition to Petition for Stay and Other Special Relief." Rust Craft and WHEC replied to Cable Television's Opposition and filed several supplements requesting immediate Commission action. On July 12, 1972, Flower City Television Corporation, licensee of Television Station WOKR (ABC), Rochester, New York, filed a "Petition for Special Relief" (CSR-173) and a "Motion for Stay," which principally request that an Order to Show Cause and a Stay issue against Cable Television to prevent it from carrying the above-listed Buffalo and Syracuse, New York, television signals. On the same date, Flower City also filed a "Motion to Consolidate" its pleadings with Rust Craft's Petition. And on July 19, 1972, and August 14, 1972, respectively, Cable Television filed an "Opposition to Motion for Stay" and "Opposition to Petition for Special Relief of Flower City Television Corporation." Flower City replied to Cable Television's Opposition.[1]

2. Cable Television's Rochester, New York, cable television system currently provides the following signals to approximately 85 subscribers:

WBEN-TV (CBS), Buffalo, New York
WGR-TV (NBC), Buffalo, New York

[1] Cable Television has an application for a certificate of compliance pending before the Commission [CAC-465 (NY370)]. We do not now rule on that application.

WKBW–TV (ABC), Buffalo, New York
WHEC–TV (CBS), Rochester, New York
WOKR (ABC), Rochester, New York
WROC–TV (NBC), Rochester, New York
WSYR–TV (NBC), Syracuse, New York

The Buffalo and Syracuse, New York, television stations place predicted Grade B contours over all or part of Rochester, New York. Buffalo, Rochester, and Syracuse, New York, respectively are the designated communities of the 24th, 56th, and 35th major television markets.

3. In December, 1969, the City of Rochester granted a non-exclusive cable television "license" to Cable Television. At that time, Flower City, Rust Craft, and WHEC were principals of Monroe Cablevision, which was an unsuccessful applicant for the same license. These station licensees no longer hold interests in Monroe Cablevision. Monroe Cablevision also proposed to carry the aforementioned Buffalo and Syracuse, New York, television signals. In April, 1970, pursuant to former Section 74.1105 of the Commission's Rules,[2] Cable Television notified the Rochester, New York, television stations that it intended to commence cable television operations in Rochester, and that it would carry the Buffalo, New York, network affiliates and WSYR–TV, Syracuse. Cable Television filed copies of the notification with the Commission on May 1, 1970. None of the Rochester television stations filed oppositions to Cable Television's proposed carriage until Rust Craft filed its initial petition on December 9, 1971, approximately 19 months after Cable Television's notification. Cable Television claims that it had 83 paying cable television subscribers prior to March 31, 1972. In January, 1970, however, Peoples Cable, another unsuccessful applicant for the Rochester, New York, cable television license, filed suit in New York State Supreme Court seeking a declaratory ruling that Cable Television's license was invalid. On May 19, 1972, the New York Supreme Court, Monroe County, ruled that Cable Television's license was invalid. Subsequently the New York Supreme Court, Appellate Division, Fourth Department, affirmed this decision, and the New York Court of Appeals denied Cable Television's motion for leave to appeal. Cable Television thus apparently does not hold a valid franchise to operate its cable television system at Rochester, New York. Cable Television has not, however, been enjoined from further operation.

4. Petitioners raise three main arguments in opposition to Cable Television's operations. Flower City argues that the Commission should not permit Cable Television to operate a cable television system at Rochester until it obtains a certificate of compliance pursuant to Section 76.11 of the Commission's Rules.[3] Flower City reasons that

[2] Former Section 74.1105 of the Commission's Rules provides in pertinent part: "(a) No CATV system shall commence operations in a community * * * unless the system has given prior notice of the proposed new service to the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system operates or will operate * * *."

[3] Section 76.11 of the Rules states in relevant part: "(a) No cable television system shall commence operations or add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission"; "(b) No cable television system lawfully carrying television broadcast signals in a community prior to March 31, 1972, shall continue carriage of such signals beyond the end of its current franchise period, or March 31, 1977, whichever occurs first, unless it receives a certificate of compliance."

Cable Television properly cannot claim any grandfather rights under Section 76.11(b) inasmuch as it was not operating lawfully by March 31, 1972, since it did not hold a valid franchise. Additionally, Flower City joins Rust Craft and WHEC in urging the Commission to rule that WBEN–TV, WGR–TV, and WKBW–TV, Buffalo, New York, and WSYR–TV, Syracuse, New York, are not grandfathered pursuant to Section 76.65 of the Rules.[4] Petitioners maintain that these signals should not be grandfathered because equity does not warrant grandfathering in this case. They note Cable Television's hurried effort to become operational before the effective date of the current rules, and point to Cable Television's limited number of subscribers. They claim that these facts support denying Cable Television grandfather rights to WBEN–TV, WGR–TV, WKBW–TV, and WSYR–TV, because such a holding would not withdraw service which is entrenched in Rochester and because the service resulted from Cable Television's effort to circumvent the current cable television rules. The Rochester stations admit that they did not object to Cable Television's April, 1970, Section 74.1105 notifications. They contend that Cable Television proposed signal carriage was inconsistent with proposed Section 74.1107(c), however, and with the interim processing procedures in *Notice of Proposed Rulemaking and Notice of Inquiry in Docket No. 18397*. FCC 68–1176, 15 FCC 2d 417.[5] Cable Television therefore cannot have grandfather rights to these signals, they argue, even though the stations previously failed to file objections to Cable Television's notifications. Moreover, the stations request the Commission to order a full evidentiary hearing to determine the impact of the disputed signals on the stations' economic viability. WHEC claims that it adequately objected to Cable Television's notification.[6] Flower City also argues that if the Commission finds that Cable Television has grandfather rights to the aforementioned Buffalo and Syracuse, New York, television signals, carriage of those signals should be limited to the area served by Cable Television on the effective date of the current cable television rules.

5. Cable Television contends that Petitioners' arguments must be viewed in light of the fact that the objections go to the same signal carriage that Monroe Cablevision proposed in its unsuccessful attempt to gain a cable television franchise for the City of Rochester. Cable Television argues that if Petitioners had wished to oppose its proposed signal carriage, they should have opposed its notifications

[4] Section 76.65 of the Rules states in relevant part: "The provisions of Sections 76.57, 76.59, 76.61 and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972: Provided, however, that if carriage of a signal has been limited by Commission order to discrete areas of a community, any expansion of service will be subject to the appropriate provisions of this subpart."

[5] Proposed Section 74.1107(c) in *Notice of Proposed Rulemaking and Notice of Inquiry in Docket No. 18397, supra*, provided in pertinent part: "(c) Carriage of signals from a major television market in another major market.—No CATV system operating in a community located wholly within the specified zone of a television broadcast station assigned to a designated community in a major television market shall carry the signal of a commercial television broadcast station assigned to a designated community in another major television market, unless the community of the CATV system is also located wholly within the specified zone of the station in the other major market."

[6] WHEC's May 15, 1970, letter to Cable Television provides in pertinent part: "This will acknowledge receipt of your letter of April 27, 1970, in which you recited plans for a community antenna television system to bring in out-of-town signals. Please cite your authority for the right to carry the distant signals set forth in your letter."

pursuant to former Sections 74.1109 and 74.1105(c) of the Commission's Rules.[7] It argues that the Rochester stations could have raised objections under either proposed Section 74.1107(c) of the *Notice of Proposed Rulemaking and Notice of Inquiry in Docket No. 18397, supra*, or under footnote 69 of the *Second Report and Order in Docket No. 15971*, 2 FCC 2d 725 (1966).[8] Under the interim processing procedures then in effect, Cable Television asserts such an objection would have automatically prevented its proposed signal carriage. Cable Television contends that denying it grandfather rights to the four signals would punish it for relying on the absence of timely filed objections. Cable Television does not deny it engaged in a crash program to become operational before the effective date of the current cable television rules; but it asserts that construction of its system was delayed until December, 1971, because the Rochester Telephone Company refused to enter into a pole attachment agreement until that time. Finally, Cable Television claims that the Rochester stations have not presented enough documentation to justify an evidentiary hearing.

6. We find that issuance of an Order to Show Cause against Cable Television's carriage of WBEN–TV, WGR–TV, WKBW–TV, and WSYR–TV is not warranted. Our former rules specifically stated that absent an opposition to a Section 74.1105 notification a cable television system could begin service, subject to the distant signal provisions of former Section 74.1107. The Rochester stations did not file objections under former Section 74.1109. Former Section 74.1107 was not applicable because WBEN–TV, WGR–TV, WKBW–TV, and WSYR–TV place predicted Grade B contours over all or part of Rochester, New York. Cable Television therefore carried television signals prior to March 31, 1972, consistent with the then effective Commission cable television rules. It thus may continue operating without a certificate of compliance until March 31, 1977, or until it receives a new franchise from the City of Rochester, whichever occurs first. We naturally do not preclude a finding by a New York

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[7] Former Section 74.1109 provides in pertinent part: "(a) Upon petition by a CATV system, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the Commission may waive any provision of the rules relating to the distribution of television broadcast signals by CATV systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question."

Former Section 74.1105(c) states: "(c) Where a petition with respect to the proposed service is filed with the Commission, pursuant to Section 74.1109 of this chapter, within thirty (30) days after notice, new service which is challenged in the petition shall not be commenced until after the Commission's ruling on the petition or on the interlocutory question of temporary relief pending further procedures; Provided, however, That service shall not be commenced in violation of the terms of any specified temporary relief or of the provisions of Section 74.1107 of this chapter. Where no petition pursuant to Section 74.1109 has been filed within thirty (30) days after notice, service may be commenced at any time thereafter, subject, however, to the provisions of Section 74.1107."

[8] Footnote 69 of the *Second Report and Order in Docket No. 15971*, stated: "If two major markets each fall within one another's Grade B contour (e.g., Washington and Baltimore), this does not mean that there is no question as to the carriage by a Baltimore CATV system of the signals of Washington; for in doing so and thus equalizing the quality of the more distant Washington signals, it might be changing the viewing habits of the Baltimore population and thus affecting the development of the Baltimore independent UHF station or stations. Such instances rarely arise, and can, we think, be dealt with by appropriate petition or Commission consideration in the usual case where a problem of this nature might arise."

State court or commission, however, that Cable Television must cease operation because it lacks a valid franchise. Issues of state law may be resolved only by state authorities. See *Aberdeen Cable TV Service, Inc.*, 26 FCC 2d 885, 886 (1971); *Illinois Commerce Commission*, FCC 72–949, 37 FCC 2d 875. We shall permit Cable Television to continue operating with its present authorized signal complement until its pending certificate application is processed. To do otherwise would force Cable Television to cease operating and would serve no purpose consistent with the public interest. However, in accordance with our usual procedure, we will defer action on Cable Television's pending certificate application in view of its franchise problem.

7. Cable Television's carriage of the Buffalo network affiliated television stations and WSYR–TV was not consistent with proposed Section 74.1107(c) in *Notice of Proposed Rulemaking and Notice of Inquiry in Docket 18397, supra;* and *El Paso Cablevision*, 27 FCC 2d 835 (1971), does suggest that a cable television system *might* not obtain grandfather rights to signals if carriage of the signals was inconsistent with either the then existing or proposed rules. The final version of our cable television rules permits continued carriage of signals authorized by prior Commission decision and those authorized by operation of former Section 74.1105 of the Rules and not inconsistent with former Section 74.1107 of the Rules. See footnote 60 of the *Cable Television Report and Order*, 36 FCC 2d 143 (1972). Thus that part of *El Paso Cablevision, supra*, which Petitioners rely on is inapposite to our current regulatory scheme. Therefore inasmuch as the Rochester Stations failed to object in a timely manner to Cable Television's former Section 74.1105 notifications, and because Cable Television's carriage of WBEN–TV, WGR–TV, WKBW–TV, and WSYR–TV was not inconsistent with former Section 74.1107 of the Rules, carriage of those signals is grandfathered in accordance with Section 76.65 of the Rules. See *TelePrompTer of Oregon*, FCC 73–1275, —— FCC 2d ——.

8. We also find that an order restricting Cable Television's carriage of these signals to the area which it served prior to March 31, 1972, would contradict Section 76.65. Since Cable Television is not subject to a prior Commission order restricting its carriage of these signals to a discrete area, it may extend all authorized signals throughout its franchise area. See *Muskegon Cable TV Company*, FCC 73–827, 42 FCC 2d 373. Finally, we hold that Petitioners' pleadings do not justify an evidentiary hearing on the impact of the disputed signals on the Rochester stations' economic viability. We note that Monroe Cablevision proposed to carry these same signals. It does not seem likely that Monroe Cablevision would have made a proposal which would have threatened Petitioners' economic viability because at that time they were the principals of Monroe Cablevision.

In view of the foregoing, the Commission finds that issuance of the requested Order to Show Cause would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Stay and Other Special Relief" filed by Rust Craft Broadcasting of New York, Inc., on December 9, 1971, IS DENIED.

IT IS FURTHER ORDERED, That the "Comments in Support of 'Petition for Stay and Other Special Relief' " filed by WHEC, Inc., on December 15, 1971, IS DENIED.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" and the "Motion for Stay" filed by Flower City Television Corporation on July 12, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

47 F.C.C. 2d

FCC 74-531

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of CLOVIS EVENING LIONS CLUB, FORREST AND MCALISTER, N. MEX.	File No. BPTT-2578
CLOVIS EVENING LIONS CLUB, CLOVIS, N. MEX. For Construction Permits for New Television Broadcast Translator Stations	File No. BPTT-2579

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 30, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has before it for consideration the above-captioned applications of Clovis Evening Lions Club, requesting (1) a construction permit for a new 100-watt UHF television broadcast translator station to serve Forrest and McAlister, New Mexico, by rebroadcasting station KOB-TV, channel 4, Albuquerque, New Mexico (NBC), on output channel 61, and (2) a construction permit for a new 100-watt UHF television broadcast translator station to serve Clovis, New Mexico, by rebroadcasting station KOB-TV, via the proposed Forrest and McAlister translator, on output channel 55. The signals of station KOB-TV are to be received directly off the air by a translator authorized to serve Mesito Del Gato Ranch Area, New Mexico (K55AL), on output channel 55; the transmissions of that translator are to be received by another translator (K67AI) which is to serve Tucumcari, New Mexico, by rebroadcasting KOB-TV's programming on output channel 67. The translator proposed in this proceeding for Forrest and McAlister (BPTT-2578) is to receive the programs of KOB-TV from station K67AI at Tucumcari and, finally, the signals of the Forrest and McAlister channel 61 translator are to be received by the proposed Clovis translator (BPTT-2579).

2. On December 20, 1973, State Telecasting Company, Inc., licensee of station KSWS-TV, channel 8, Roswell, New Mexico (NBC), filed a petition to deny.[1] Petitioner claims standing as a party in interest within the meaning of section 309(d) of the Communications Act of 1934, as amended, on the grounds that Clovis lies within the predicted Grade B contour of station KSWS-TV, and that station KSWS-TV will, therefore, compete for viewership with the translator, inflicting economic injury on station KSWS-TV. The applicant disputes petitioner's claim of standing, alleging that Clovis is outside station KSWS-TV's predicted Grade B contour. Implicit in these respective

[1] The applicant filed an opposition to the petition on January 21, 1974, and petitioner filed a reply thereto on February 22, 1974.

positions is the assumption that the real party in interest in these translator applications is Hubbard Broadcasting, Inc., licensee of station KOB–TV. There is ample support for this assumption and there is no pretense that the facts are otherwise.[2] Consequently, for simplicity, we will regard these proposals as those of Hubbard, for if Hubbard could not succeed on the merits, neither can Clovis Evening Lions Club.

3. Much is made of whether Clovis lies within or without KSWS–TV's predicted Grade B contour, both for the purpose of the claim of standing and for the purpose of ascertaining whether KSWS–TV provides service to Clovis. We find this factor irrelevant insofar as standing is concerned, for, to the extent that KSWS–TV's signals are received in Clovis, irrespective of the predicted Grade B contour, there is competition for viewership sufficient to confer standing. We find, therefore, that petitioner has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008. The applications (BPTT–2551, Mesito Del Gato Ranch Area, and BPTT–2553, Tucumcari) for the first two translators in the system were not contested and were granted on May 7, 1974.

4. The opposition to these applications may be divided into three basic objections: (1) they violate section 74.731(c) of the rules because they are intended primarily as relay stations; (2) the application for the translator at Forrest and McAlister violates section 74.737(b) of the rules because the applicant has not chosen a site within five miles of the principal communities; and (3) there is no need for an additional broadcast service carrying an NBC-affiliated station. Before undertaking an analysis of these issues, we believe that we should examine the television situation in the area. The only television station assigned to Clovis is KFDW–TV, channel 12, a satellite of station KFDA–TV, channel 10, Amarillo, Texas (CBS). Petitioner's station KSWS–TV, channel 8, Roswell, New Mexico, is a satellite of station KCBD–TV, channel 11, Lubbock, Texas (NBC). There is a 10-watt translator station (K06GF) serving Clovis by rebroadcasting station KVII–TV, channel 7, Amarillo, Texas (ABC), and there is a 100-watt translator (K74DO) serving Forrest and McAlister by rebroadcasting station KOAT–TV, channel 7, Albuquerque, New Mexico (ABC), on channel 74. Clovis is also served by a cable television system with 6,742 subscribers (as of December 31, 1972), carrying the following signals:

KDFA–TV, channel 10, Amarillo, Texas (CBS)
KGNC–TV, channel 4, Amarillo, Texas (NBC)
KVII–TV, channel 7, Amarillo, Texas (ABC)
KOAT–TV, channel 7, Albuquerque, New Mexico (ABC)
KSWS–TV, channel 8, Roswell, New Mexico (NBC)
KBIM–TV, channel 10, Roswell, New Mexico (CBS)

5. There is no dispute with respect to whether the four-translator system intended to operate as an integrated system bringing the signals of KOB–TV from Albuquerque to Clovis via the first three stations as relays; the question is whether any of the proposals violate

[2] For example, all equipment, engineering and legal services are being furnished by Hubbard, the equipment under a nominal lease arrangement.

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section 74.731(c) of the rules.[3] Petitioner contends that the first three translators are intended and designed to be used primarily as relays to the Clovis translator and secondarily to serve areas containing insignificant population. In this connection, the parties dispute the applicability of the Commission's decision in *KOAT Television, Inc. (K74DO)*, 20 FCC 2d 155, 17 RR 2d 608, where the Commission granted the application of KOAT Television, Inc., for a construction permit for a new UHF translator station to serve Forrest and McAlister. The issue involved in that case was whether the translator was intended for use solely as a relay and, in deciding that it was not, the Commission pointed out that a significant number of homes would be served by the translator. Petitioner here does not contend that the translators are to be used solely as relays, contending only that their primary function is as relays. Consequently, *KOAT Television, Inc.*, is inapposite. While it is true that we do not look favorably upon translators to be used primarily as relays, the rules do not specifically preclude such use. The distinction between use solely as relays and use primarily as relays is based upon long-standing policy that each translator must be justified on the basis that it provides direct reception to the public and use as a relay must be incidental. *Report and Order* in Docket No. 12116, FCC 60-976, 20 RR 1536 (1960); *San Juan Non-Profit TV Association*, 33 FCC 749, 23 RR 365, 377. This, in turn, is based on the firm belief that where a translator serves a significant number of homes while operating also as a relay to another translator serving additional homes, the public interest is served. See *Frontier Broadcasting Company*, FCC 63 760, 1 RR 2d 50; *Kimble Translator Co., Inc.*, 1 FCC 2d 364, 5 RR 2d 697. Consequently, we would not condone a translator operating as a point-to-point relay station where the public in the area of that translator derives no direct benefit. That, however, is not the case here. Petitioner repeatedly points to the small number of persons which would be served by the Forrest and McAlister translator, attempting to distinguish *KOAT Television* on the basis that, in *KOAT Television*, a thousand TV homes would be served, whereas here there would be substantially fewer. The only significance of our mention of the number of homes to be served in *KOAT Television* was to establish that the translator was not to be used solely as a relay, but we are not prepared to establish a minimum number of homes which must be served by a translator and implicitly determine that communities with fewer homes are not entitled to television. We foresaw, in the *Report and Order* in Docket No. 12116, *supra*, that an applicant for a translator to serve a larger community (Clovis) might well subsidize translators to serve smaller intervening communities (Forrest and McAlister) in order to be able to use the signals of such an intermediate translator as the input to the translator serving the larger community. *San Juan Non-Profit TV Association, supra.* We are satisfied that these applications are consistent with our rules and policies in this respect.

[3] "The transmission of each television broadcast translator station shall be intended for direct reception by the general public and any other use shall be incidental thereto. A television broadcast translator station shall not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution, or further relaying."

6. Petitioner concedes that the Clovis translator would be located within five miles of the area to be served, but contends that because the proposed Forrest-McAlister translator would be more than five miles from the area to be served,[4] it may be inconsistent with section 74.737(b) of the Commission's rules.[5] The applicant responds that the site is approximately 650 feet from the site of station K74DO, KOAT's translator serving Forrest and McAlister, and complies with all Commission technical requirements, including line-of-sight. Moreover, as the applicant points out, section 74.737(b) is suggestive rather than mandatory. *Heart of Texas TV*, 25 FCC 2d 754, 20 RR 353. We find petitioner's argument in this respect to be without merit.

7. Petitioner next argues that NBC network service is provided to Clovis by stations KSWS–TV and KGNC–TV, channel 4, Amarillo, Texas, both of which are also carried on the Clovis cable television system. There is no need, it is said, for a third NBC network service, particularly from a station nearly 150 miles away. Station KOB–TV is not entitled to carriage on the Clovis cable television system, but, petitioner contends, a 100-watt UHF translator serving Clovis with KOB–TV's programs would be entitled to carriage under section 76.59(a)(5) of the rules. The applicant says that if the Clovis application and the preceding applications are granted, it would request carriage on the Clovis cable television system, but would not ask for program exclusivity. Though carriage on the Clovis cable system might be the result and, perhaps, even the motive for the filing of the applications, none of our rules or policies are offended. Since it is not uncommon for several stations affiliated with the same network to be carried on a 12-channel capacity system such as that in Clovis, the public may well choose which it will watch on the basis of non-network offerings. We can perceive no harm to the public in this case.

8. The applicant contends that KOB–TV will provide to Clovis the first off-the-air NBC network service and to Forrest and McAlister their only NBC network service. Moreover, the applicant states, the proposed Clovis translator will provide the first off-the-air New Mexico-originated program service. Petitioner disputes these claims, alleging that station KSWS–TV provides off-the-air NBC network programming to Clovis and that New Mexico news is originated from station KCBD–TV in Lubbock, Texas, for the Clovis audience. Assuming the accuracy of petitioner's allegations, it seems apparent that the translator would provide a strong signal to Clovis and bring to that community programming designed primarily for the people of New Mexico. We discussed the importance of programming designed for the audience of the state where it was originated in our decision in *Mt. Mansfield Television, Inc.*, 41 FCC 2d 899, 27 RR 2d 1585. We there said, in pertinent part:

> Although we recognize that the New York State stations may carry some programs of interest to residents of Vermont, these offerings cannot provide a substitute for subjects of vital interest to residents of Vermont, such

[4] The proposed site is approximately seven miles from Forrest and about 11.5 miles from McAlister.

[5] Section 74.737(b) of the Commission's rules provides: A site within 5 miles of the area intended to be served is to be preferred if the conditions in paragraph (a) of this section can be met.

as Vermont political affairs, Vermont news and legislative matters, local sports and cultural events, and other matters of public concern which are of interest principally to residents of Vermont.

Much the same situation obtains here. Clovis, a community of some 29,000 persons, is without primary service from a station programming primarily for New Mexico, except for KOAT–TV's programming which is available only on the cable television system.[6] We believe that the residents of Clovis, together with those who would benefit by operation of the intermediate translator, are entitled to at least this. Consequently, because it is apparent that there is a public need for such programming, the matter of whether station KSWS–TV serves Clovis is immaterial.

9. We have found that the matter of whether Clovis is within station KSWS–TV's predicted Grade B contour is irrelevant; that there is no dispute of the fact with respect to whether the applications are consistent with sections 74.731(c) and 74.737(b) of the rules; that service to a small number of homes does not militate against grant of a translator application; and that the public in Clovis should be able to receive programming designed and intended primarily for New Mexico. We hold, therefore, that no substantial or material questions of fact have been raised by the petitioner. We further find that the applications are consistent with all of the Commission's rules and policies and the applicant is qualified to construct, own and operate the proposed translator stations and that grant of the applications would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the petition to deny filed herein by State Telecasting Company, Inc., IS DENIED, and the above-captioned applications of Clovis Evening Lions Club, ARE GRANTED, in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[6] Apparently, there are some homes in Clovis which may be able to receive the signals of station KBIM–TV, channel 10, Roswell, New Mexico (CBS), which is shown in Television Factbook (1973–1974) to have net weekly circulation in Curry County of between 5 and 24 percent.

FCC 74-502

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
COLUMBIA MONTOUR BROADCASTING CO., INC.
(WCNR), BLOOMSBURG, PA.
Request for Ruling

DECLARATORY RULING

(Adopted May 14, 1974; Released May 23, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has before it a request filed on behalf of Columbia Montour Broadcasting Co., Inc. (Columbia), licensee of standard broadcast station WCNR, Bloomsburg, Pennsylvania, for an interpretative ruling or advisory opinion as to whether a noncommercial broadcast service, namely station WPGM-FM, Danville, Pennsylvania, which operates on a commercial frequency, may be considered to be so similar to a noncommercial educational broadcast service that it may be excluded from a determination of the number of aural services provided to a community pursuant to section 73.37(e)(2)(iii) of the rules, or, in the alternative, whether the Commission would waive that section of the rules if station WCNR were to apply for nighttime facilities. Pursuant to section 1.2 of our rules, we shall consider this request as a motion for a declaratory ruling.

2. On February 21, 1973, in our *Report and Order in Docket No. 18651* concerning the amendment of part 73 of the Commission's rules regarding AM station assignment standards and the relationship between the AM and FM broadcast services (39 FCC 2d 645 (1973)), the Commission revised section 73.37 of its rules. Of particular relevance to Columbia's request is the fact that section 73.37 of the rules was revised to provide that any standard broadcast application for a new unlimited-time station, or for a change in the frequency of an authorized unlimited-time station, or for nighttime facilities for an authorized daytime station, must make a satisfactory showing pursuant to section 73.37(e)(2) that it has met the requirements of paragraph (e)(2)(i) and either paragraph (e)(2)(ii) or (e)(2)(iii) of that section. Columbia chooses to attempt to comply with paragraphs (e)(2)(i) and (e)(2)(iii) of section 73.37(e)(2). Columbia believes that it can comply with paragraph (e)(2)(i) of that section, which states that an applicant must show that objectionable interference at night will not result to any authorized station, as determined pursuant to section 73.182(o) of the rules. Paragraph (e)(2)(iii) of section 73.37(e)(2) requires an applicant to show that no FM channel is avail-

able for use in the community designated in the application and that at least 20 percent of the area or population of the community receives less than two nighttime aural services. Further, note 7 to section 73.37 explains that, in the determination of the extent of existing aural service to a community, commonly owned AM/FM broadcast stations will be considered as a single aural service, and that service provided by noncommercial educational FM stations and standard broadcast stations shall not be included in the determination of existing aural service to a community. Although no FM channel is available for use in Bloomsburg, that community already receives nighttime aural service from stations WHLM(AM) and WHLM–FM, which we will consider as a single aural service pursuant to note 7 to section 73.37, and from station WPGM–FM, Danville, Pennsylvania. Columbia asserts that since station WPGM–FM is run by a non-profit corporation and broadcasts substantial amounts of religious programs and music, it should be considered to be a noncommercial educational station. Accordingly, Columbia requests a ruling that station WPGM–FM may be excluded from a determination of the number of aural services provided to Bloomsburg pursuant to section 73.37(e)(2)(iii) of the rules on the grounds that it is very similar to a noncommercial educational broadcast service, or in the alternative, that the Commission waive section 73.37(e)(2)(iii) of the rules.

3. In paragraph 57 of our *Report and Order in Docket No. 18651, supra*, we stated some of the reasons for not including service which is provided by noncommercial educational standard broadcast and FM stations in the determination of the adequacy of aural service to a community. We explained that our revisions of the acceptability criteria for AM applications contained in section 73.37 of the rules were directed to making two "competing" voices available to each community, so that two program services, as well as two independent viewpoints on matters of community concern, would be present. We also underscored the characteristics of noncommercial educational broadcast stations which distinguish them from broadcast stations operating on commercial channels. We asserted that over 60 percent of the FM educational stations in the United States are class D 10-watt stations operated by educational institutions, both at the college and secondary school levels. Consequently, these stations provide specialized service for the benefit of their respective student bodies and frequently serve primarily as training facilities to teach students the art and science of broadcasting. Further, all educational stations are exempted from many of the operating requirements imposed upon commercial stations. Thus, educational stations have no minimum hours of operation, are not required to pay filing fees, are not required to provide any particular community with city grade signals, and are not presently required to ascertain community problems, or to provide programming to meet such ascertained problems. In addition, section 399 of the Communications Act of 1934, as amended, prohibits noncommercial educational broadcasting stations from engaging in editorializing or supporting or opposing any candidate for political office.

4. In addition to the foregoing differences between educational and commercial broadcast stations, it is important to note that the choice

of entertainment formats lies primarily within the discretion of broadcast licensees, and the judgment exercised by a broadcast licensee regarding these matters will not be questioned unless it appears that the choice is not reasonably attuned to the tastes of the residents of the proposed community of license, or that an existing licensee proposes a change in format which would deprive the community of programming for which there is no comparable listening alternative. See, e.g., *Citizens Committee* v. *FCC*, 436 F. 2d 263, 20 RR 2d 2026 (D.C. Cir., 1970), *Citizens Committee To Keep Progressive Rock* v. *FCC*, 27 RR 2d 463 (D.C. Cir. 1973), and *Citizens Committee To Save WEFM* v. *FCC*, 28 RR 2d 1251 (D.C. Cir., 1973). Thus, although station WPGM–FM now has a format which includes substantial amounts of religious music and programs and operates on a non-profit basis, the licensee could change that format at almost any time, absent significant dissent from local citizens. Moreover, the licensee of that station could arrange to sell the station to a strictly commercial operator since the station operates on a commercial frequency, or the existing licensee could choose to operate on a profitable commercial basis as other broadcasters whose format is religious have chosen to do. Since programming formats are so readily changeable, the Commission, when faced with requests for waiver of our technical standards, has consistently afforded the "* * * greatest weight * * * to the enduring allocation characteristics of a proposal rather than to the generally transitory programming to be carried." *Mel-Lin, Inc.*, 22 FCC 2d 165 (1970).

5. In summary, given the different rights, duties and privileges that apply to broadcasters operating on commercial, as opposed to educational frequencies, we cannot consider station WPGM–FM to be an educational broadcast station merely because of its chosen format and because it operates on a non-profit basis. The licensee of that station must meet all the federal regulatory requirements imposed on commercial broadcast licensees. It must, *inter alia*, ascertain community problems and present programming which attempts to be responsive to those problems, place a signal of a specific field intensity over the community of license, operate a minimum number of hours, and pay filing fees. As previously noted, an educational station is not required to do any of these things. In addition, station WPGM–FM may operate on a commercial basis, and, in all likelihood, change its format, at any time it chooses. Moreover, it is the only FM station licensed to Danville, Pennsylvania, and thus the only FM station in that community which is permitted to editorialize and to openly support or oppose political candidates. Thus, the current regulatory system contemplates station WPGM–FM as a "competing voice" within its service area, not as an educational broadcast station, which the regulatory system contemplates as an "extra voice." In light of the foregoing discussion, we can find no persuasive reasons to exclude station WPGM–FM from a determination of the number of aural services provided to Bloomsburg, nor can we perceive any reason for waiving section 73.37(e)(2)(iii) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74–495

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of COMMUNITY TELEVISION, INC., READING, OHIO	CAC–1300 OH275
LOCKLAND, OHIO For Certificates of Compliance	CAC–1304 OH274

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 22, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On November 21, 1973, the Commission denied the above-captioned applications for certificates of compliance because it concluded that the franchises awarded by the cities of Reading and Lockland, Ohio, did "not achieve the required degrees of conformity with Section 76.31" of the Rules. Specifically, both franchises contained provisions delaying their operative effect until the "Revised Copyright and Importation of distant signal dilemma has been resolved by the FCC and the Congress of the United States." Additionally, neither franchise indicated that Community's qualifications and construction arrangements had been approved by the local authorities as part of full public proceedings affording due process, as required by Section 76.31(a)(1); neither franchise specified construction schedules, as required by Section 76.31(a)(2); and neither franchise established complaint procedures (including the requirement of the maintenance of a local office), as required by Section 76.31(a)(5). Further, the initial duration of the Lockland franchise was 25 years—ten years longer than the maximum initial franchise period permitted by Section 76.31(a)(3). *Community Television, Inc.*, FCC 73–1208, 43 FCC 2d 1090 (1973).

2. We indicated in that action that our denial of the applications would be without prejudice to a reconsideration in connection with the submission of amended franchises. *Id.*, at 1092. The Reading and Lockland city councils subsequently amended Community's franchises and, accordingly, Community has filed petitions for reconsideration of our original denial. These petitions are unopposed.

3. Both franchises have been amended to delete the above-described "copyright" provisions. Additionally, each franchise now requires Community to extend energized trunk cable to 20% of the franchise areas within one year following Commission certification, and to extend such cable to an additional 20% of each area each year thereafter. Further, each franchise has been amended to establish a subscriber complaint procedure and to require the maintenance of a local

office, and the initial duration of the Lockland franchise has been reduced from 25 years to 15 years. Finally, both franchises now specify that Community's qualifications and construction arrangements have been approved by each city council acting pursuant to the procedures required by due process.

4. We conclude that each of the submitted franchises, as amended, is fully consistent with the requirements of Section 76.31 of our Rules. Accordingly, we find that a grant of the above-described petitions for reconsideration, and of the above-captioned applications for certificates of compliance, would serve the public interest. Additionally, for the reasons indicated in our original action, *id.*, at 1091, we conclude that the grant of a partial waiver of Section 76.251(a)(4), to permit Community to construct access studio and production facilities to be shared by the two communities, would also serve the public interest.

Accordingly, IT IS ORDERED, That the "Petition[s] for Reconsideration," filed on behalf of Community Television, Inc., ARE GRANTED.

IT IS FURTHER ORDERED, That the above-captioned applications for certificates of compliance, and the request for a partial waiver of Section 76.251(a)(4) to permit the construction of access studio and production facilities to be shared by the communities of Reading and Lockland, Ohio, ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74–516

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of CEASE AND DESIST ORDER TO BE DIRECTED AGAINST: A. J. CORVIN, JR., 416 127TH STREET SOUTH, TACOMA, WASH. 98444	Docket No. 20063

ORDER TO SHOW CAUSE

(Adopted May 22, 1974; Released May 30, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. A. J. Corvin, Jr. of 416 127th St. So., Tacoma, Washington is the owner and operator of a master antenna television system located at the College Orchard Apartments, 12730 South 'C' Street, Tacoma, Washington. This system, which constitutes an incidental radiation device, is picking up the fundamental signal of KPLU–FM on 88.5 MHz, doubling it and retransmitting it on 177 MHz. Thus, the system is causing harmful interference to the television reception of persons living in the vicinity of the College Orchard Apartments attempting to achieve reception of KIRO–TV (Channel 7) which occupies the band from 174 to 180 MHz. Mr. Corvin is aware of the interference, but despite repeated written and oral requests by Commission personnel to correct it, he refuses to do so and continues to operate the system in violation of Section 15.31 of the Commission's rules.

2. It is apparent that Mr. Corvin will continue to operate the master antenna television system located at the College Orchard Apartments in violation of Section 15.31 of the Commission's rules (47 C.F.R. § 15.31), unless further action is taken.

Accordingly, IT IS ORDERED, pursuant to Section 312(b) and (c) of the Communications Act of 1934, as amended, [47 U.S.C. § 312 (b) (c)] that A. J. Corvin, Jr., is DIRECTED TO SHOW CAUSE why he SHOULD NOT BE ORDERED TO CEASE AND DESIST from further operation of the master antenna television system at the College Orchard Apartments in violation of Section 15.31 of the Commission's rules (47 C.F.R. § 15.31), and to appear and give evidence as to the matters raised in paragraph one, at a hearing to be held at a time and location to be specified in a subsequent Order, that time to be no less than thirty (30) days from the receipt of the Order.

IT IS FURTHER ORDERED, that to avail himself of the opportunity to be heard, Mr. Corvin, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show

Cause a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If Mr. Corvin fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. See Section 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. See Section 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission. Thereupon, the matter will be determined by the Commission in the regular course of business and an appropriate Order will be entered. See Sections 1.92 (c) and (d) of the Commission's Rules.

IT IS FURTHER ORDERED, that a copy of this Order shall be sent by Certified Air Mail-Return Receipt Requested to Mr. Corvin at his last known address as shown in the caption.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74R-192

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
DAVID ORTIZ RADIO CORP., CABO ROJO, PUERTO RICO	Docket No. 19920 File No. BPH-8236
SOUTHWESTERN BROADCASTING CORP., HORMIGUEROS, PUERTO RICO	Docket No. 19921 File No. BPH-8333
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted May 23, 1974; Released May 24, 1974)

BY THE REVIEW BOARD: BOARD MEMBER NELSON DISSENTING AND VOTING TO EXCLUDE THE FINANCIAL ISSUE.

1. The above-captioned mutually exclusive applications were designated for hearing by Order of the Chief of the Broadcast Bureau, 39 FR 2799, published January 24, 1974, now before the Review Board is a motion to enlarge issues, filed February 8, 1974, by Southwestern Broadcasting Corporation (Southwestern), seeking the addition of Rule 1.65, Rule 1.514 and financial issues against David Ortiz Radio Corporation (Ortiz).[1]

2. Southwestern contends that a Section 1.65 issue is required because of Ortiz's failure to timely amend its pending FM application [2] to reflect the December 19, 1973 filing of its application requesting nighttime authorization for its daytime AM Station WEKO.[3] Specification of the requested issue is especially warranted here, Southwestern asserts, because the application involves a major change in an AM station owned by an applicant for an FM station in the same community.[4] Petitioner bases its request for a Section 1.514 issue on Ortiz's failure to include any reference to the pending FM application in its AM application. Further, in light of Ortiz's failure to consider these two applications together in order to establish its financial qualifications, petitioner claims that an availability of funds issue is also required. According to petitioner, it cannot be determined from the information now on file whether sufficient funds are available to Ortiz to construct and operate both stations for one year. Thus, petitioner points out that the Ortiz balance sheet filed with the WEKO nighttime application reflects that current liabilities ($8,305.05) exceed cash ($7,743.30) by $561.75; moreover, Southwestern asserts, the accounts

[1] The Board also has before it for consideration the following related pleadings: (a) opposition, filed February 19, 1974, by Ortiz; and (b) opposition, filed February 21, 1974, by the Broadcast Bureau.

[2] The FM application was filed on January 19, 1973.

[3] Ortiz did not file an amendment to the FM application reporting the filing of its AM application until February 5, 1974, more than 30 days after filing the AM application.

[4] Citing *Alvin L. Kornoold*, 31 FCC 2d 39, 22 RR 2d 661 (1971); *A. V. Bamford*, 41 FCC 2d 835, 27 RR 2d 1659 (1973).

receivable listed in the balance sheet cannot be relied upon since they have not been shown to be "aged" and certified collectable within 90 days by a Certified Public Accountant.

3. In opposition, Ortiz contends that the failure to amend its FM application in a timely fashion was purely inadvertent. In support of this contention, Ortiz points out that upon discovering its omission it voluntarily amended its FM application to report the filing of its AM application on February 5, 1974, and, significantly, that it amended its application prior to the filing of Southwestern's motion. Similarly, the applicant contends that a Section 1.514 issue is not warranted since it voluntarily amended its AM application on February 4, 1974, to report its FM application. In any event, Ortiz claims it had no motive to conceal the pertinent information since it is financially qualified to build and operate both facilities. In this connection, Ortiz states that its current balance sheet shows funds available in the amount of $22,000 [5] to meet total first year costs of $21,756. According to the applicant, this does not include any reliance on the profits from Station WEKO, which earned $25,938 in 1972. Finally, Ortiz alleges that he will file an amendment to the AM application to show that an additional $4,000 loan commitment is available to meet the expenses involved in that application. The Broadcast Bureau also opposes addition of the requested Section 1.65 and 1.514 issues on the grounds that the failure to timely comply with those sections appears to have been inadvertent and not motivated by any desire to conceal pertinent information. The Bureau also opposes addition of the requested financial issue because, in its view, when the profitable operation of WEKO is taken into consideration, Ortiz has sufficient funds to cover the estimated costs.

4. The Board will not add the requested Sections 1.65 and 1.514 issues. Although Ortiz was not in strict compliance with the provisions of Sections 1.65 and 1.514 of the Rules, his petitions to amend were filed within a short time after the expiration of the time allotted by the Rules, and were filed voluntarily before Southwestern filed the instant motion to enlarge issues. Since the above noted circumstances sufficiently distinguish the instant proceeding from the cases cited by Southwestern, and since it appears that the omissions were purely inadvertent and not the result of an attempt to mislead or deceive the Commission, the Sections 1.65 and 1.514 issues will not be specified. See *Lester H. Allen*, 17 FCC 2d 439, 16 RR 2d 19 (1969). However, based on the record before us, the Board is unable to conclude that Ortiz will have sufficient funds to construct and operate both stations for one year. Ortiz's most recent balance sheet, dated November 30, 1973, shows that current liabilities exceed cash on hand by $561.75. Although the balance sheet also reflects accounts receivable of $25,544.37, it is well established that in the absence of a special showing of liquidity such as here, accounts receivable cannot be relied upon to establish financial qualifications.[6] Nor can the applicant rely on

[5] Ortiz relies on loans from a credit cooperative and from Jose Ortiz Cintron in the amount of $12,000 and $10,000 respectively.

[6] *Miami Broadcasting Corporation*, 9 FCC 2d 694, 10 RR 2d 1037 (1967); *Vista Broadcasting Co., Inc.*, 18 FCC 2d 636, 16 RR 2d 838 (1969); *Erwin O'Conner Broadcasting Co.*, 37 FCC 2d 983, 25 RR 2d 782 (1972).

the availability of profits from Station WEKO since it cannot be determined from the balance sheet whether the cash flow generated by the station would, in fact, be available for the construction and operation of both stations. See *Erwin O'Conner Broadcasting Co.*, 37 FCC 2d 983, 25 RR 2d 782 (1972). In addition, we cannot rely on the availability of the $10,000 loan from Jose Ortiz Cintron because the balance sheet submitted with the loan agreement does not disclose the liabilities, if any, of Mr. Cintron and therefore does not afford a basis for determining his overall ability to meet his commitment.[7] Therefore, including the $12,000 loan from the credit cooperative, Ortiz has shown only $19,743.30 in current assets (including cash on hand) with which to meet $21,756 in total estimated costs for both the FM and AM proposals. However, even these assets must be reduced by the total amount of current liabilities. *Alvin L. Korngold*, 31 FCC 2d 39, 22 RR 2d 661 (1971). Therefore, an appropriate financial issue will be added to determine whether Ortiz has sufficient available funds to meet the estimated costs of both proposals.

5. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed February 8, 1974, by Southwestern Broadcasting Corporation, IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

6. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED to include the following issue:

To determine whether David Ortiz Radio Corporation has available sufficient additional funds to construct and operate his proposed Cabo Rojo, Puerto Rico, FM station for one year, and whether, in light of the evidence adduced, David Ortiz Radio Corporation is financially qualified.

7. IT IS FURTHER ORDERED, That the burdens of proceeding with the introduction of evidence and proof pursuant to the issue specified herein SHALL BE on David Ortiz Radio Corporation.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[7] Similarly, we cannot rely on the additional $4,000 loan from Mr. Cintron until the amendment reflecting that loan has been accepted by the Judge.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
NAT FRITZ
Concerning the Fairness Doctrine involving Stations WDAF–TV, KCMO–TV, and KMBC–TV, Kansas City, Mo.

MAY 24, 1974.

MR. NAT FRITZ,
7438 Olive St.,
Kansas City, Mo. 64132

DEAR MR. FRITZ: This is in reference to your letter of April 16, 1974, in which you claim that stations WDAF–TV, KCMO–TV and KMBC–TV, all in Kansas City, Missouri, have failed to adhere to the responsibilities imposed upon them by the fairness doctrine.

You stated that "[n]one of the three stations provide substantial time during prime time hours for dissent . . ." against a proposal submitted to the voters during a bond issue election held April 2, 1974. You made no mention in your letter of the specific issue presented to the voters during this election. Although you stated that all three of the aforementioned stations did present contrasting views on the bond issue, you claimed that the amount of time devoted to opponents of the proposal was insufficient, both in terms of the amount of time so devoted and in terms of the time periods during which such opposing views were aired.

Under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information including: (1) the station or network involved; (2) the specific issue of a controversial nature of public importance broadcast (complainant should include an accurate summary of the views broadcast by the station or network); (3) the date and time when the issue was broadcast; (4) the basis for the claim that the issue was a controversial issue of public importance, either nationally or in the station's local area at the time of the broadcast; (5) reasonable grounds for the claim that the station or network broadcast only one side of the issue in its overall programming; (6) copies of correspondence between the complainant and the station or network; and (7) whether the station or network has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue.

You have failed to furnish the Commission with detailed information as to the matters indicated in the preceding paragraph. In particular you have not provided the Commission with an accurate summary of the views broadcast concerning the bond issue voted on in the April referendum. Lacking such a summary, the Commission has no means of ascertaining exactly what was broadcast regarding this issue by the three stations in question. In this connection, you have not supplied the Commission with information, supported by copies of correspondence from the stations, indicating the response of each station to your March 6, 1974 letter of complaint to each licensee. You also have not provided reasonable grounds for the claim that any of the three stations in question broadcast only one side of the issue in its overall programming. In your March 6, 1974 letter to each of the stations you stated:

> I do not feel that your past practice in these elections has been satisfactory for the presentation of opposing views. For the most part the opposition has been restricted to a minute or less to present their views on controversial issues involving massive amounts of public money.

In view of the fact that this assertion follows a reference to a past bond issue referendum, it is not clear that the comments specifically refer to the presentation of views concerning the April 2 bond issue. This uncertainty is accented by the general reference to "views on controversial issues involving massive amounts of public money." Nor does your letter of complaint to the Commission show how any station presented one side of any issue.

In view of the fact that you have failed to provide the Commission with particularized information as to the matters set forth above, we cannot ascertain the precise nature of the facts and circumstances surrounding the broadcasts of views on the bond issue by WDAF–TV, KCMO–TV and KMBC–TV. Accordingly, we are unable to make any determination as to the reasonableness of the actions of the licensees of these stations. As the Commission has stated:

> Absent detailed and specific evidence of failure to comply with the requirements of the fairness doctrine, it would be unreasonable to require licensees to disprove allegations such as those made here ("general assertions that the licensee has unfairly presented issues on its programs . . ."). The Commission's

policy of encouraging robust, wide-open debate on issues of public importance would in practice be defeated if, on the basis of vague and general charges of unfairness, we should impose upon licensees the burden of proving the contrary by producing recordings or transcripts of all news programs, editorials, commentaries and discussion of public issues, many of which are treated over long periods of time. *Allen C. Phelps*, 21 FCC 2d 12, 13 (1969).

In view of the foregoing, no further Commission action on your complaint appears warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

47 F.C.C. 2d

104-040—74——3

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
HON. BALDY HANSEN
Concerning the Fairness Doctrine involving Station KAUS–TV, Austin, Minn.

MAY 16, 1974.

Hon. BALDY HANSEN,
Minnesota Senate,
100 SE. First St.,
Austin, Minn. 55912

DEAR MR. HANSEN: This is in reference to your fairness doctrine complaint of April 18, 1974 against station KAUS–TV, Austin, Minnesota, wherein you alleged that KAUS–TV has failed to afford you an opportunity to present your views on the merits of the sign language method of teaching the deaf. You specifically objected to the fact that KAUS–TV refused to allow your viewpoint to be presented unless you paid the prevailing commercial rates. You contend that you are entitled to free "equal time".

Attached to your letter of complaint were copies of correspondence between you and Mr. Richard V. Taber, Vice President and General Manager of KAUS–TV. In his November 26, 1973 correspondence to you, Mr. Taber acknowledges that the station presented a news story concerning a School for the Deaf. Mr. Taber further advised you that the station presented, as a regular feature of its 5:30 p.m. and 10:00 p.m. newscasts, a segment entitled "Viewpoint", a presentation ". . . designed specifically to permit . . . viewers to address themselves to the issues of the day." Mr. Taber further stated that the station included in each "Viewpoint" broadcast an invitation to viewers to write letters to the station expressing opinions concerning matters ". . . they feel important." Mr. Taber thereupon explicitly issued an invitation to you ". . . to address a letter to VIEWPOINT expressing your views on the School for the Deaf news story which you considered to be controversial."

In your November 30, 1973 reply to Mr. Taber's letter, you rejected the station's offer to present your views through the format of the "Viewpoint" program and stated that ". . . anything less than equal opportunity . . . would certainly not be adequate to answer the editorial that you put on the air commending Minnesota's disgraceful efforts in the teaching of our deaf children."

In a letter dated January 30, 1974 addressed to Mr. Taber, you requested information concerning the commercial rates that would be charged for prime-time display of the contents of an enclosed bumper sticker, which stated: "Hearing Alert!—Washington, D.C. 20007. Deaf children can learn to talk!" In his February 4, 1974 response to this inquiry, Mr. Taber stated that, as an alternative to paid broadcast of

the bumper sticker display, you should consider the possibility of presenting the sticker's message as part of a "shared I.D.", which is a slide containing both a station identification and the message contained in the bumper sticker display. Mr. Taber stated that, although he could not guarantee the times at which such shared I.D.'s would be shown, since shared I.D.'s are put in rotation, he could assure you that the proposed shared I.D. would run on occasion in prime time.

In a February 11, 1974 response to the February 4 letter, you requested that Mr. Taber advise you of the cost of presenting the bumper sticker message during the 6:00 p.m. and 10:00 p.m. newscasts. In his February 13, 1974 reply to your inquiry Mr. Taber provided you with the requested rates and reiterated his offer to schedule messages for "Deaf Children Can Learn to Talk" as rotating, public service announcements.

The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter, and it does not attempt to direct broadcasters in the selection or presentation of specific programming.

However, under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

In regard to your claim that KAUS–TV may have failed to meet its fairness doctrine obligations, where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to submit specific information indicating, *inter alia*, reasonable grounds for the allegation that the station involved has presented one side of a controversial issue of public importance, and has not afforded, nor plans to afford, a reasonable opportunity for the presentation of contrasting views on that issue in its overall programming.

You have failed to provide sufficient information to show that the question of the merits of the sign language method of teaching the deaf constitutes a controversial issue of public importance, either nationally or in KAUS–TV's local area. Furthermore, assuming, *arguendo*, that this issue is or was a controversial issue of public importance, you make no showing that the licensee failed to present contrasting views on this

issue in its overall programming. Indeed, as noted above, correspondence between yourself and Mr. Taber indicates that the licensee in fact offered you the opportunity to have your views on the issue presented during a "Viewpoint" segment of a newscast aired by KAUS–TV, and that you refused to accept this offer. Additionally, it appears that the licensee offered two other means for having your views presented without cost—the shared I.D. proposal and the proposal to present your views in the format of a public service announcement.

In light of the foregoing, no further Commission action on your complaint is warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

FCC 74-561

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
ACCURACY IN MEDIA ON BEHALF OF MARILYN DESAULNIERS
Concerning Fairness Doctrine re Public Broadcasting Service

MEMORANDUM OPINION AND ORDER

(Adopted May 29, 1974; Released May 31, 1974)

BY THE COMMISSION:

1. The Commission has before it (1) a petition filed by Horace P. Rowley, III seeking reconsideration of the Commission's action of November 13, 1973, 43 FCC 2d 851, in the above-captioned matter; (2) comments filed by the Corporation for Public Broadcasting (CPB) and the Public Broadcasting Service (PBS) opposing the petition; and (3) Mr. Rowley's reply. Our November 13, 1973 ruling arose out of a complaint filed by Accuracy in Media (AIM) against PBS and CPB regarding two programs broadcast by PBS. The complaint invoked both the Commission's fairness doctrine and Section 396(g)(1)(A) of the Communications Act, 47 U.S.C. 396(g)(1)(A). The latter provision applies only to CPB and requires "strict adherence to objectivity and balance" in programs and program series of a controversial nature made available to educational stations by CPB. On January 23, 1973, the Commission found that PBS had not violated its fairness obligations, 39 FCC 2d 416, but did not decide whether Section 396(g)(1)(A) had been violated, inviting further comments on that question if any of the parties believed that it should be explored. 39 FCC 2d at 420n.1. Pleadings were subsequently filed on the issue of the Commission's jurisdiction over CPB, and AIM also requested reconsideration of the denial of its fairness doctrine complaint against PBS. In the November 13, 1973 ruling, the Commission determined that it did not have authority to enforce Section 396(g)(1)(A) and, in addition, denied AIM's petition for reconsideration of the January 23, 1973 fairness doctrine ruling.

2. Mr. Rowley urges in his petition that the Commission's action of November 13, 1973 is erroneous in the following respects: (1) that the Commission's statement that CPB is not "a broadcaster amenable to Section 315 regulation" [1] is "erroneous" and "dicta"; and (2) that the Commission concluded in footnote 1 of the ruling "that if a noncommercial licensee broadcast a program which was furnished by CPB

[1] 43 FCC 2d 851, 854 n. 3 (1973).

and no other program on the issue, then the Commission would have to accept CPB's decision on the fairness of the program." [2] Petitioner states such conclusion is "erroneous", "contradictory", and "gratuitous dicta [which] will cause much confusion and litigation. . . ." In addition Mr. Rowley requests that the Commission make an additional conclusion of law that PBS is a "broadcaster."

3. The comments of both CPB and PBS oppose the petition in all respects, asserting that Mr. Rowley is rearguing the points he made to the Commission in his initial briefs in this matter, which the Commission rejected; that Mr. Rowley has misread footnote 1 of the ruling; and that Mr. Rowley is requesting the Commission to make an additional conclusion of law that is unnecessary to the determination of the issues before it. We basically agree with the opposing comments and will deny the petition for the reasons set out below.

4. The issue of whether CPB is a broadcaster was specifically decided in our initial action. Mr. Rowley has presented no new facts but has merely reiterated his earlier arguments, and we see no reason to change our view on this question.

5. With respect to Mr. Rowley's allegation concerning what he describes as the "Commission's conclusion" in footnote 1 of the opinion, we need say only that we think it was amply clear that the footnote did not state a conclusion of the Commission but merely summarized CPB's position, a position we specifically rejected later in our opinion.[3] Thus, we see no ambiguity and no need for clarification.

6. Finally we see no need to further consider Mr. Rowley's request that the Commission make an additional conclusion of law that PBS is a "broadcaster". (In this context he also argues that PBS is a "network".) Our first decision of January 23, 1973 considered the PBS programs under the fairness doctrine; Mr. Rowley's contention, if specifically adopted, would add nothing. In any event, we will not now entertain a second petition for reconsideration of that decision.

7. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Horace P. Rowley, III on December 17, 1973, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] Petition at para. 4. See 43 FCC 2d at 852 n. 1.
[3] See 43 FCC 2d at 854 n. 4.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
REV. C. DON BAUGH
Concerning the Fairness Doctrine Involving Station KTSA, San Antonio, Tex.

MAY 17, 1974.

REV. C. DON BAUGH,
San Antonio Council of Churches,
Three-O-One Broadway Building,
301 Broadway,
San Antonio, Tex. 78205

DEAR REVEREND BAUGH: This is in reference to your complaint dated April 15, 1974, wherein you allege that Radio Station KTSA, San Antonio, Texas, has held you up to personal ridicule and has "called into question" both the ministry and the Church in presenting a particular editorial by commentator Logan Stewart at 5:40 a.m. and 7:40 a.m. on April 8, 1974. Excerpts from the above-mentioned editorial are stated below:

> We are all religious people, in the main, and when our clergy speak, we listen endowing their words with a mantle of truth. However, when the clergy wander afield from the province of their expertise, their way too becomes fraught with the danger of error. Some of the clergy have got their facts wrong, one hopes because they are misinformed . . . One of these [two local clergymen] Reverend C. Don Baugh, Executive Director of the San Antonio Council of Churches, is a man of prestigious position, one hesitates to point out to him that he has written an untruth . . . Again I trust such a remark by the Reverend is born of misinformation for it is inaccurate . . . If the clergy believe betting on a horse race is sinful, then they should so say. But the clergy should not becloud a nonecclesiastial issue with misinformation, it damages the faith we place in their word whether spoken or written.

The personal attack rule was established by the Commission to effectuate important aspects of the fairness doctrine. The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of contrasting views in its overall programming, which includes news programs, interviews, discussions, debates, speeches, and the like. The personal attack rule is set forth in Section 73.123(a) of the Commission's Rules and states as follows:

> When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

The licensee is called upon to make reasonable judgments in good faith on the facts of each situation—such as to whether a controversial issue of public importance is involved, whether there is a personal attack, and whether the group or person attacked is identified sufficiently in the context to come within the rules. The Commission's role is not to substitute its judgment for that of the licensee on these matters, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. *Sidney Willens and Russell Millin*, 33 FCC 2d 304 (1972).

The April 8 editorial attacked the accuracy of your article of April 6, 1974 in the San Antonio Light entitled "Horse Racing, Gambling". It appears that Stewart differed with your conclusion, questioning the source and precision of your information rather than assailing your personal veracity. Not every unfavorable reference to an individual constitutes a personal attack. See *Jack Luskin*, 23 FCC 2d 874 (1970); *Mrs. Frank Diez*, 27 FCC 2d 859 (1971). Rather, the rule applies to attacks made upon an individual's honesty, character, integrity or other like personal qualities—characteristics which relate to the moral turpitude of an individual and not to the particular individual's ability or knowledge. *Rome Hospital and Murphy Memorial Hospital*, 40 FCC 2d 452 (1973). That Stewart believes that your allegedly erroneous statements could very well "damage the faith in the clergy's word," cannot be construed as a personal attack on you, or as an attack on either the ministry or the Church. The Commission has previously held that a statement of a particular view, however strongly or forcefully made, does not necessarily result in a personal attack. *Pennsylvania CATV Ass'n Inc.*, 1 FCC 2d 1610 (1965). Inasmuch as you have not received any correspondence from the licensee concerning the above stated comments, it appears that KTSA believes that such comments do not attack your honesty, character, integrity or like personal qualities. From the information before the Commission, we are unable to conclude that the licensee's failure to either notify you of the above editorial or offer you an opportunity to reply was unreasonable.

The fairness doctrine may be applicable to your complaint. However, you have not alleged that the station has failed to afford a reasonable opportunity for the presentation of contrasting views on the matter herein. *Allen C. Phelps*, 21 FCC 2d 12 (1969). FCC Procedure Manual, 37 F.R. 20510 (1972). If you believe that the licensee has failed in this respect, we recommend that you bring your complaint to the licensee's attention, furnishing it with the basis for your belief that it has failed to fulfill its obligations under the fairness doctrine. If you are not satisfied with the licensee's response, and the Commission is so advised in pertinent, factual detail, it will, if appropriate, request a statement from the licensee and provide you with an opportunity to comment on the licensee's statement, if you so desire. Thereafter, on the basis of all available information, the Commission will attempt to determine whether the licensee's actions under the circumstances, violated any rules or policies of the Commission. See paragraphs 12–14, page 20512 of the enclosed Procedure Manual.

In view of the foregoing, no further Commission action appears warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
CHARLIE SHIPLEY
Concerning the Fairness Doctrine involving Stations WIZO and WIZO–FM

MAY 23, 1974.

Mr. CHARLIE SHIPLEY,
P.O. Box 215,
Franklin, Tenn. 37064

DEAR MR. SHIPLEY: This is in reference to your complaints of June 30, 1973 and March 23, 1974 against radio stations WIZO and WIZO–FM, and those of your daughter, Ms. Judy Parnell, dated June 19, 1973 and March 19, 1974.

The time of the filing of your complaints warrants some comment. Although the election and the actions of which you complain occurred in July and August of 1972, neither you nor Ms. Parnell filed a complaint until June 1973. In a letter dated July 6, 1973 the Commission sent Ms. Parnell a letter containing detailed instructions on the information necessary to file a fairness doctrine complaint. Under cover of a letter dated July 13, 1973 the Commission sent a copy of that letter to you and other complainants. In a letter dated August 8, 1973 you requested directions on what information must be submitted in order to make a fairness doctrine complaint. In a letter to you dated September 21, 1973 the Commission again provided you with detailed instructions on the information necessary to make a fairness doctrine complaint. Neither Ms. Parnell nor you submitted any further information to supplement your complaints until March 19 and 23, 1974.

You stated in your complaint of June 30, 1973 that the stations "refused to broadcast both sides of controversial issues" during an election campaign in which you were a candidate for Superintendent of Schools; that the station had "been unfair in reporting the news in regard to a hearing before the Board of Education and a Federal Judge in Nashville"; and that a "detailed statement about the situation" had been submitted by Ms. Parnell.

In Ms. Parnell's letter of June 19, 1973 she stated that she felt that WIZO had "violated the fairness doctrine during the county school superintendent's race in the summer 1972 election"; that in that election you ran against Mr. Milton Lillard, who was the incumbent; that Mr. Jim Hayes, manager of WIZO, helped Mr. Lillard with his radio advertising campaign and Mr. Dan Rodgers, assistant manager of WIZO helped you with your radio advertising campaign; that both candidates used political advertising, but WIZO newscasts were an important factor in the campaign; that Mr. Lillard was more fre-

quently mentioned in the newscasts and "very insignificant" items concerning Mr. Lillard were broadcast and "rerun for several news programs . . . extending into a second day at times"; that one of the major issues of the campaign was a school bus drivers' strike; that WIZO broadcast on the news on July 13, 1972 a statement by Mr. Lillard that the bus strike had been settled; that the report of the srtike settlement was carried on WIZO news "for a week or ten days", and "much was said about the Superintendent being able to settle the bus strike"; that a member of the board of education which handled the bus drivers' negotiations, and a number of bus drivers informed WIZO that the strike was not settled but WIZO refused to report these statements; that the only way you were "ever able to get any statements on from . . . [yourself] was through paid advertising"; that "WIZO certainly violated [Section 315(c)(2) of the Communications Act and Sections 73.120 and 73.290 of the Commission's Rules] through discrimination between [you] and Lillard in the practices and regulation of news, services furnished to the candidates, and by making and giving preference to Lillard's candidacy in slanting and distorting the news and not allowing favorable comments concerning [your] candidacy on the news; that this created prejudice in the public's mind thereby putting [you] at a disadvantage"; that, subsequent to the election, you were demoted from your position in the school system and brought suit in federal court to be restored to your position; that WIZO continually broadcast details of the charges against you but never broadcast that all charges were denied; and that WIZO slanted all of its reports in favor of the school board and sought to cast you and your attorney in a bad light.

The Commission is also in receipt of a letter filed on July 3, 1973, signed by Mr. Sam Reed and Mr. Raymond Giles, among others, that WIZO reported the bus drivers' strike as settled before it actually was settled, and a letter from Ms. Peggy Wilson, who was a member of the school board at the time of the bus drivers' strike, also stating that WIZO reported the bus drivers' strike as settled before it actually was settled.

In a letter dated July 13, 1973 the Commission sent copies of these complaints to WIZO and WIZO–FM and requested their comments.

In a response to these complaints, filed with the Commission on July 31, 1973, WIZO stated that the July 12, 1972 WIZO news report that the school bus drivers returned to work was accurate, "a tape recorded actuality"; that the bus drivers' strike "became an explosive issue that required careful journalism"; that at the peak of tension WIZO felt that mention of the strike should be reduced; that Lillard and Clinard [1] complied, but "Shipley insisted on broadcasting an inflammatory attack as news"; that WIZO refused to broadcast your statement as news, but offered you free time; and that WIZO acted in good faith throughout the campaign.

In her reply to the response of WIZO, dated March 19, 1974, Ms. Parnell disputed WIZO's contention that its handling of the bus

[1] Mr. Clinard was Chairman of the Board of Education at the time of the broadcast.

drivers' strike was intended to "relieve tension"; and stated that WIZO's offer of time to you did not come until the day of the election; and that your suit in Federal Court against Mr. Lillard, Mr. Clinard, and the school board had been decided in your favor. She restated her position in her initial complaint.

In reply to the Commission's informational letter of September 21, 1973, you sent the Commission a letter dated March 23, 1974. In that letter you restated your position as outlined in your letter of June 30, 1973; and stated that WIZO made an offer of free time to you to express your viewpoint only if your statements were edited and an introduction and closing statement were added by WIZO; and that WIZO did broadcast an unedited statement by you, but added an introduction and closing statement which conflicted with your statement. Included with your letter were copies of correspondence between WIZO and you dated July 24, 1972 and July 31, 1972. In the letter from WIZO to you of July 24, 1972 Mr. James H. Hayes, General Manager of WIZO offered you "free and equal time on WIZO–AM and WIZO–FM to deliver your views"; and stated that the report that the bus drivers would return to work "was judged to be the first and only positive meaningful move to avert what looked to be a sure renewal of tension in the School bus strike issue; that as "General Manager of WIZO, it was [Mr. Hayes'] judgment [that] aversion of tension renewal was more important [than] accompanying political implications which are a matter of opinion"; that, as a result of a discussion with you, Mr. Hayes "must . . . reassess [his] judgment and offer you an opportunity to speak"; and that "[p]ortions [of your statement] judged as news will be handled as such, but your entire statement will be broadcast under the terms of the FCC Fairness Doctrine." In the letter from WIZO to you dated July 31, 1972 Mr. Hayes indicated that your statement would be broadcast unedited, with introductory and closing statements, a total of twelve times on August 1 and 2, 1972.

The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter, and it does not attempt to direct broadcasters in the selection or presentation of specific programming.

Under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have

acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information including: (1) reasonable grounds for the claim that the station or network broadcast only one side of the issue in its overall programming; and (2) whether the station or network has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue.

Assuming that the bus drivers' strike was a controversial issue of public importance, you have failed to show that WIZO and WIZO–FM have not afforded a reasonable opportunity for the presentation of contrasting viewpoints on that issue. You claim that the report of the end of the strike was carried on WIZO newscast "for a week to ten days," without giving times, dates, or even an approximation of the number of announcements or amount of time spent on that aspect of the issue. However the licensee claims, without contradiction by you, that your statement on the issue was broadcast, unedited, seven times on WIZO and five times on WIZO–FM on August 1 and 2, 1972. In view of these facts it cannot be said that the licensee has acted unreasonably or in bad faith in making available opportunities for the presentation of contrasting viewpoints.

The Commission sometimes receives allegations that a network, station or newscaster has distorted or suppressed news or has staged or fabricated news occurrences. Although the Commission will not attempt to substitute its judgment of news values for those of a licensee, deliberate distortion, slanting or "staging" of news by licensees would be patently inconsistent with the public interest. However, in order for the Commission appropriately to commence action in this sensitive area it must receive significant extrinsic evidence of such deliberate distortion as, for example, statements by individuals who have personal knowledge that a licensee ordered the news to be distorted or fabricated. Were this Commission to do otherwise and proceed simply on the basis of allegations that what was said over the air was inaccurate or untrue, it would be in the position of determining the "truth" of each factual situation, evaluating the degree to which the matter complained of departed from the "truth," and, finally, calling upon the licensee to explain the deviation. The Commission believes that such activities would be inappropriate for a Government licensing agency. Rather than determining the truth or falsity of such statements, the Commission deems it more appropriate to assure that a reasonable opportunity is afforded for the presentation of contrasting views. However, as stated above, when significant extrinsic evidence of deliberate distortion or staging of news is received, the Commission will make such inquiry as appears appropriate to the circumstances. The integrity of news broadcasting is crucial to an informed, responsible electorate and the Commission has stressed the continuing duty of licensees to take adequate measures to insure such integrity. The

Commission's policy in this area is set forth in its *Letter to Mrs. J. R. Paul*, 26 FCC 2d 591 (1969), a copy of which is enclosed.

In view of the above, no further action is warranted on your complaint.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
GEORGE W. LEHR
Concerning the Fairness Doctrine

MAY 23, 1974.

MR. GEORGE W. LEHR,
Jackson County Court House,
Kansas City, Mo. 64106

DEAR MR. LEHR: This is in reference to your letter to the Commission dated May 17, 1974. You state that "all the TV stations and as many of the radio stations as possible in the greater Kansas City Area" will simulcast a program on June 10, "which is the night before the school levy election"; that the "emphasis on the simulcast will be entirely urging voters to participate in the election and having both proponents and opponents on the show to answer questions from callers"; that the simulcast was arranged solely at your request "and in no way were arrangements made among the stations"; and that you wish to know if this proposed simulcast would be contrary to Commission regulations and "what the requirements of the Fairness Doctrine would be in having such a simulcast."

Under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, each broadcast licensee individually has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of each broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

It does not appear from the information supplied in your letter that the proposed simulcast would violate any Commission regulation or policy.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
DAVID GORDON
Concerning the Fairness Doctrine involving Station WBAI, New York, N.Y.

MAY 24, 1974.

MR. DAVID GORDON,
Principal, Far Rockaway High School,
Bay Twenty-Fifth Street and Ocean Crest Boulevard,
Far Rockaway, N.Y. 11691

DEAR MR. GORDON: This is in reference to your complaint against radio station WBAI, New York, New York, in which you allege that the licensee has failed to comply with the Commission's personal attack rule in connection with the December 3, 1973 broadcast of the program, "Urban Education."

In a letter to the Commission dated February 6, 1974 you stated that you had been informed by listeners of an attack on you during the December 3 broadcast; that you were never notified of the attack or given an opportunity to reply; that on December 6, 1973 you had asked the station for a copy of the tape of the December 3 program and you received no response; and that in attempting to contact the staff of WBAI by phone, you were "rudely" treated.

In a letter dated February 14, 1974 we requested WBAI's comments regarding your contention that the licensee had not responded to your initial request.

In a reply dated March 12, the licensee apologized for the amount of time it took to prepare the tape and issue a response, as well as for the rude treatment you received in attempting to contact their offices. The licensee also denied that a personal attack had taken place during the program in question. In a letter to the Commission filed March 21, 1974, you acknowledged the receipt of the tape.* You stated that it supported your contention that you had been personally attacked; that during the broadcast Miss Fran Newman made an unfair remark concerning the actions of "the principal of Far Rockaway High School" which "an unsuspecting ordinary listener would rightly find . . . abhorrent and unworthy," and which would be understood as a direct attack on you. You further state, "You can judge for yourself whether saying that a principal reprimanded a teacher for an accidental tear in her pantyhose and used it as one factor in an unsatisfactory rating holds the principal up to public ridicule; whether Miss Newman's statements were slanderous in their import; and whether WBAI acted irresponsibly and in a manner contrary to the public interest."

*A copy of the tape was furnished to the Commission by the licensee.

104-040—74——4

We received an additional letter from the licensee dated April 3 stating that their records indicate that two tapes were sent to you—the first on February 15, which presumably was lost in transit, and a second copy, sent on February 25, which ultimately reached you.

The personal attack rule (Section 73.598(a) of the Commission's Rules) states:

> (a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of reasonable opportunity to respond over the licensee's facilities.

We have listened to the tape of the broadcast and cannot conclude that the licensee was unreasonable in determining that a personal attack against you was not broadcast. Your complaint centers around statements made by Miss Newman that after accidentally ripping her panty hose during a dance class at the school where she was teaching, she was reprimanded and received an unsatisfactory rating from the school's administration. However there was no indication on the tape when this incident took place or whether it occurred while Miss Newman was teaching at Far Rockaway High School. Her only reference to that school was her statement that she had been the teacher union's "chapter secretary of Far Rockaway High School" in 1960. This statement was not made in connection with her reference to the panty hose incident. Moreover, at no point on the tape was your name mentioned. Under the foregoing circumstances it would not appear that a personal attack against an "identified person" took place.

Even if, as you state, the comments related to you and you were identified, it still cannot be said that they attack your honesty, character, integrity or like personal qualities, characteristics which relate to moral turpitude of an individual and not to his ability or knowledge. See *Letter to Rome Hospital and Murphy Memorial Hospital*, 40 FCC 2d 437 (1973). Not every unfavorable reference to an individual constitutes a personal attack, however strongly or forcefully made. *Jack Luskin*, 23 FCC 2d 974 (1970). Likewise, criticism of a public official's wisdom, judgment or actions is not necessarily an attack upon his honesty, character, integrity or like personal qualities. *WCMP Broadcasting Company*, 41 FCC 2d 201 (1973).

Accordingly, it cannot be concluded that the licensee acted unreasonably in determining that a personal attack, as defined by Commission Rules, had not occurred, and, therefore, no further Commission action appears warranted on your complaint.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration.

Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

FCC 74-500

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re FIVE CHANNEL CABLE CO., NEW MARTINSVILLE, PADEN CITY, W. VA. Request for Special Relief	CSR-445, 446 WV122 WV123

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 23, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On July 25, 1973, Five Channel Cable Company, operator of cable television systems at New Martinsville and Paden City, West Virginia, filed requests for waiver (CSR-445, 446) of Sections 76.91 (a) and 76.93(a) of the Commission's Rules,[1] seeking authorization not to provide network program exclusivity to Television Station WDTV, (CBS) Weston, West Virginia, *vis-a-vis* the signal of Station KDKA-TV (CBS) Pittsburgh, Pennsylvania. On November 16, 1973, Withers Broadcasting Company of West Virginia, licensee of Television Station WDTV, Weston, West Virginia, filed an "Opposition to Petition for Waiver and Request for Consolidation."

2. New Martinsville and Paden City are located within the Wheeling, West Virginia, major television market (No. 90). Five Channel operates twelve channel cable television systems in both communities, and provides its subscribers the following television signals:

KDKA-TV (CBS, channel 2), Pittsburgh, Pennsylvania.
WTAE-TV (ABC, channel 4), Pittsburgh, Pennsylvania.
WTRF-TV (NBC, channel 29), Wheeling, West Virginia.
WWVU (educational, channel 24), Morgantown, West Virginia.
WSTV-TV (CBS, channel 9), Steubenville, Ohio.
WIIC-TV (NBC, channel 11), Pittsburgh, Pennsylvania.
WBOY-TV (NBC, channel 12), Clarksburg, West Virginia.

[1] Section 76.91(a) provides: "(a) Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station, shall on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95."

Section 76.93(a) provides: "(a) Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday-Saturday) during which exclusivity is sought."

WQED (educational, channel 13), Pittsburgh, Pennsylvania.
WDTV (CBS, channel 5), Weston, West Virginia.

WDTV is a CBS affiliate and places a predicted Grade B contour over New Martinsville and Paden City. WSTV–TV and KDKA–TV are also CBS affiliates, but only WSTV–TV places a predicted Grade B contour over either community. Withers Broadcasting is seeking network exclusivity only with respect to the signal of KDKA–TV.

3. Five Channel argues that it should not be required to accord WDTV exclusivity, on the grounds that WDTV transmits a low-quality signal, that WDTV is not receivable off-the-air while KDKA–TV is, and that subscribers would prefer to view CBS programming on several channels. We reject Five Channel's arguments for the following reasons.

4. Five Channel offers no documentation in support of its contentions. Accordingly, it is impossible to give them any weight. The argument that WDTV's signal is so poor that it cannot be delivered properly to its subscribers is very tenuous, since another CBS affiliate which Five Channel carries is a distant signal which fails to place even a predicted Grade B contour over its communities. Similarly, Five Channel has made no showing that KDKA–TV provides a better signal than WDTV. And it has done nothing more than claim that exclusivity protection is unnecessary for WDTV and would be disruptive to its subscribers' established viewing habits. As we recently noted in *Tygart Valley Cable Corporation*, FCC 73–1178, 43 FCC 2d 966, such unsubstantiated arguments cannot justify a waiver of our rules.

In view of the foregoing, the Commission finds that a grant of the requested waiver of Sections 76.91 and 76.93 of the Commission's Rules would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the petitions for waiver (CSR–445, 446) filed July 25, 1973, by Five Channel Cable Company ARE DENIED.

IT IS FURTHER ORDERED, That Five Channel Cable Company IS DIRECTED to comply with the requirements of Sections 76.91 and 76.93 of the Commission's Rules on its cable television systems at New Martinsville and Paden City, West Virginia, within thirty (30) days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS, *Secretary.*

FCC 74-532

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (JENSEN BEACH AND VERO BEACH, FLA.)	Docket No. 19772 RM-1943 RM-1990

REPORT AND ORDER

(Proceeding Terminated)

(Adopted May 22, 1974; Released May 24, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On June 13, 1973, the Commission adopted a Notice of Proposed Rule Making (FCC 73-642, 38 Fed. Reg. 16661) in the above-entitled matter. The Notice proposed amendment of the FM Table of Assignments by assigning a first channel to Jensen Beach and a second channel to Vero Beach, Florida.

RM-1943, JENSEN BEACH, FLA.

2. Our Notice proposed to assign FM Channel 296A to Jensen Beach, Florida. Timely comments and/or reply comments were filed by petitioner Robert A. Jones, the Jensen Beach Chamber of Commerce, and Blue Water Broadcasting Co., Inc. (Blue Water), licensee of FM Station WMCF at Stuart, Florida, four miles from Jensen Beach.

3. Three basic questions are posed: (1) Is Jensen Beach a community for the purpose of assigning an FM channel to it? (2) If Jensen Beach is such a community, is it large enough and significant enough to warrant the assignment of an FM channel? (3) Can Channel 296A be used at Jensen Beach in full compliance with our engineering requirements?

4. According to the Rand McNally Commercial Atlas and Marketing Guide, 1971, Jensen Beach, Florida, which is not listed in the 1970 U.S. Census, has a population of 5,000 permanent winter residents.[1] It is located in Martin County which has 28,035 persons residing in it. There is no FM assignment at Jensen Beach nor is there any standard broadcast station located there. To determine if Jensen Beach is a commu-

[1] A variety of techniques for estimating the population in Jensen Beach have been tendered by petitioner including the use of postal and voter registration statistics. Since the development of an estimated population from these statistics depends, in part, on the evaluators' interest, we are not using them but are instead using the figure cited by the Rand McNally Commercial Atlas and Marketing Guide of 1971 for determining the size of Jensen Beach. We believe the Rand McNally figure is a comprehensive calculation arrived at by a totally independent and non-interested entity. All population statistics, except for Jensen Beach, are from the 1970 U.S. Census.

nity for the above-mentioned purpose we turn to the following information.

5. The Jensen Beach Chamber of Commerce states that Jensen Beach, by common censensus, is made up of that group of persons located in a land area of eight square miles bounded by the Martin/St. Lucie County line on the north, U.S. Highway #1 on the west, the St. Lucie River on the south and the Atlantic Ocean on the east. The existence of Jensen Beach as a community is questioned by Blue Water in an apparent effort to deny the assignment of a first FM channel to Jensen Beach. Blue Water points out that Jensen Beach does not have an independent formally established governmental body guiding and controlling it, and that many of the institutions in Jensen Beach are arms of, or controlled by, the Commissioners of Martin County. The only evidence offered by petitioner as to the present existence of a rudimentary governmental structure at Jensen Beach are the facts that Jensen Beach has its own independent fire department and ambulance service. However, Mr. Jones brings to our attention the fact that organized citizens of Jensen Beach commenced, as of July 5, 1973, a drive to seek a governmental charter and incorporation for Jensen Beach. From the material provided us it appears that the achieving of a charter and incorporation for Jensen Beach depends primarily on the will of the citizens of Jensen Beach and that the citizens of Jensen Beach are of the view that a formally governmentally recognized Jensen Beach will result in the fulfillment of their desire to control the planning and operating of vital local functions such as zoning, population density, police protection, traffic flow, recreation and water and sewage management.

6. In connection with the commercial and social activity in the area known as Jensen Beach we make but a few observations. The community has its own active Chamber of Commerce which has 134 current businesses subscribing and 34 non-business subscribers for a membership totalling 168. This indicates a significant concentration of commercial and business activity as does an examination of the Chamber-produced Jensen Beach Fishing Guide which displays advertisements indicating that Jensen Beach has a wide variety of services and products available in it for the area's citizens and tourists. The commercial activity in Jensen Beach is supported by a local commercial bank ($20 million in deposits) and a developing Federal Savings and Loan Association. Jensen Beach appears to have the normal variety of service organizations (for example, the Jensen Beach Women's Association) in which community members cooperate to advance civic activities. The basic social activity in the area appears to revolve about five churches and their substantial membership. Activities are sponsored by the Chamber of Commerce and the fire department. The local newspaper is the *Jensen Beach Mirror*.

7. We find that Jensen Beach is a community in the sense required for us to assign an FM channel to it, i.e., its commercial and social life indicate there is a community of interest associated with an identifiable population grouping at Jensen Beach. In light of particularly the commercial life at Jensen Beach we hold that the community is of sig-

nificant size. This, of course, is supported by the population attributed to it by the Rand McNally Commercial Atlas and Marketing Guide of 1971—5,000 persons.

8. Our Notice stated that any transmitter site for a Channel 296A assigned to Jensen Beach would have to be located approximately 4 miles south of that community in order to meet our minimum mileage separation requirements to Channel 296A at Melbourne, Florida, WTAI–FM. Blue Water offers a showing that indicates that air navigation in the Jensen Beach area additionally limits the choice of an appropriate transmitter site from which Jensen Beach in its entirety could be served by an FM station broadcasting on Channel 296A. However, Mr. Jones shows that it is not necessary to locate an antenna more than four miles from Witham Field (county airport). A Class A station, operating with maximum power and antenna height of 200 feet above average terrain from a site on the west bank of South Fork of St. Lucie River, about three miles from the airfield, would be able to comply with the appropriate provisions of the Commission's Rules.

9. In view of the foregoing, we find it in the public interest to assign Channel 296A to Jensen Beach, Florida.

RM–1990, VERO BEACH, FLA.

10. The Notice proposed the assignment of Channel 288A to Vero Beach, Florida. The only comment received in response to our Notice was brief and was from Mr. Wister, the original petitioner.

11. According to the 1970 U.S. Census, Indian River County, Florida, has a population of 35,992, and its governmental seat, Vero Beach, has a population of 11,908. There is one FM assignment at Vero Beach, Channel 228A (WGYL) which is licensed to WGYL Radio Corp. There are also two standard broadcast stations in the community, WAXE and WTTB. The former is licensed as a daytime-only station to Shargo, Inc., while the latter is an unlimited-time station licensed to Tropics, Inc.

12. The Notice contained substantial information about Vero Beach—its location, past and anticipated growth, business and industrial activities, community services, and other matters—which amply demonstrated that Vero Beach qualified for a second Class A channel assignment, and which will not be repeated here.

13. The Notice in this proceeding mentioned the contention of Tropics, Inc. (Tropics), licensee of standard broadcast Station WTTB, Vero Beach, Florida, that the assignment of Channel 288A to Vero Beach would have a serious preclusionary impact on FM assignments in the area. Although Tropics did not respond to our Notice, we are of the view that it is important to touch again on the matter of preclusion. As to Tropics' allegation that the assignment of Channel 288A to Vero Beach would foreclose assignments to a number of communities which do not have aural broadcast facilities, petitioner points out that the population of some of the communities mentioned are less than 300 and that others are portions of existing towns which are already served by their own broadcast media. Mr. Wister has shown

that Channel 292A is available to the precluded area north of Vero Beach. We believe that the assignment of Channel 288A to Vero Beach would not deprive any sizeable community located within the precluded area of a first local broadcast service.

14. Having considered all the material presented in RM–1990, we conclude that the public interest would be served by assignment of a second FM channel to Vero Beach, Florida.

15. Accordingly, IT IS ORDERED, that effective July 1, 1974, the FM Table of Assignments in Section 73.202(b) of the Commission's Rules IS AMENDED, insofar as the communities listed below are concerned, to read as follows:

City:	*Channel No.*
Jensen Beach, Fla	296A
Vero Beach, Fla	228A, 288A

16. Authority for the actions taken herein is contained in Sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended.

17. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

47 F.C.C. 2d

FCC 74-527

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re FREEPORT CABLEVISION, INC., FREEPORT, ILL. For Special Temporary Authority	CSR-526 (IL 133)

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 30, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. Freeport Cablevision. Inc., operates a cable television system at Freeport, Illinois, part of the Rockford-Freeport, Illinois television market (No. 97). On April 18, 1974, Freeport Cablevision filed an application for a Certificate of Compliance (CAC-3799) and a request for special temporary authorization (CSR-526) seeking the Commission's authorization to replace the signal of Station WFLD-TV (Ind., Channel 32, Chicago, Illinois) with Station WSNS-TV (Ind., Channel 44, Chicago, Illinois). This intended change is sought on the basis of a shift of the carriage of the Chicago White Sox baseball games from WFLD-TV to WSNS-TV. Special temporary authority to carry WSNS-TV in lieu of WFLD-TV is requested while final action on the application for certification is pending. Freeport Cablevision argues that both Commission precedent and the public interest support its request.

2. In *TV Cable Company of Stephenson County*, FCC 74-301, —— FCC 2d ——, the Commission authorized the following signals to be carried on the Freeport system:

WREX-TV (ABC, Channel 13), Rockford, Illinois
WTVO (NBC, Channel 17), Rockford, Illinois
WCEE-TV (CBS, Channel 23), Freeport, Illinois
WHA-TV (Educational, Channel 21), Madison, Wisconsin
WKOW-TV (ABC, Channel 27), Madison, Wisconsin
WISC-TV (CBS, Channel 3), Madison, Wisconsin
WMTV (NBC, Channel 15), Madison, Wisconsin
WTTW (Educational, Channel 11), Chicago, Illinois
WGN-TV (Independent, Channel 9), Chicago, Illinois
WFLD-TV (Independent, Channel 32), Chicago, Illinois.

Since the system would continue to provide its subscribers with two independent signals, the major market signal carriage rules (Section 76.63 of the Commission's Rules) would not be violated by the requested relief. Furthermore, as no new distant signals will be carried, Freeport Cablevision would not incur any additional obligations under our access rules (Section 76.251 of the Rules).

3. This situation is familiar to the Commission. We have, on several occasions, recognized the public interest importance of continued carriage of Chicago White Sox games,[1] and the fact that the season is already in progress establishes sufficient urgency to warrant grant of the requested special temporary authority while disposition of the related certification application is pending. Consistent with that application, this temporary authority involves substitution of WSNS–TV's full schedule of programs, not only the White Sox games.

In view of the foregoing, the Commission finds that the issuance of a special temporary authorization would serve the public interest.

Accordingly, IT IS ORDERED, That the request for temporary authority filed by Freeport Cablevision, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] *Logansport TV Cable Company*, FCC 74–204, —— FCC 2d ——; *Video Service Company*, FCC 73–376, 40 FCC 2d 480, *recons. denied*, FCC 73–1209, 43 FCC 2d 1239; *Dubuque TV–FM Cable Co.*, FCC 73–357, 40 FCC 2d 393.

FCC 74-518

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GENERAL TELEVISION OF MINNESOTA, INC., FRIDLEY, MINN. For Certificate of Compliance	CAC-1722 MN077

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. General Television of Minnesota, Inc., has filed an application for a certificate of compliance to begin cable television service at Fridley, Minnesota (population 29,233), a community located within the Minneapolis-St. Paul, Minnesota, major television market (#13). Proposed signal carriage consists of the following:

KMSP-TV (ABC, channel 9), St. Paul, Minnesota
KSTP-TV (NBC, channel 5), St. Paul, Minnesota
KTCA-TV (Educational, channel 2), St. Paul, Minnesota
KTCI-TV (Educational, channel 17), St. Paul, Minnesota
WCCO-TV (CBS, channel 4), Minneapolis, Minnesota
WTCN-TV (Independent, channel 11), Minneapolis, Minnesota
KTMA-TV (Independent, channel 23), Minneapolis, Minnesota
WVTV (Independent, channel 18), Milwaukee, Wisconsin
WGN-TV (Independent, channel 9), Chicago, Illinois

This carriage is consistent with Section 76.61 of the Commission's Rules. The applicant proposes to construct a thirty channel system with the capacity for two way communications, to provide public, educational, and local government access channels, and otherwise to comply with Section 76.251 of the Commission's Rules. On December 27, 1973, General Television amended its application to delete WVTV, Milwaukee, Wisconsin, and add CBWT, Winnipeg, Manitoba, Canada. On February 4, 1974, this amendment was opposed by Hubbard Broadcasting, Inc. On April 29, 1974, General Television withdrew its amendment, thereby mooting the objection of Hubbard Broadcasting. Accordingly, the "Objection of Hubbard Broadcasting, Inc., Pursuant to Section 76.27" will be dismissed as moot.

2. The franchise submitted by the applicant, became effective November 23, 1972, and was amended effective September 13, 1973. Consequently, full compliance with the franchise standards of Section 76.31 of the Rules is required. We note that the requirements of Section 76.31(a) have been met. However, insofar as this franchise provides for an annual fee in excess of three percent of gross subscriber

revenues,[1] pursuant to Section 76.31(b) the reasonableness of such a fee must be established. In support of the reasonableness of the franchise fee, General Television notes Fridley's extensive supervisory program which includes an advisory commission charged with overseeing the development of cable services, and asserts that this strong community interest and participation will benefit and promote the usage of cable services consistent with the Commission's policies. The City of Fridley, as local regulator and franchisor, has provided this Commission with a detailed regulatory program for cable television services in the community. The program includes a local Cable Television Commission to advise and assist the City of Fridley upon all matters affecting the local cable television system.[2] Additionally, by-laws have been prepared and enacted. The sum of $20,250 has been budgeted for the yearly operation of the cable commission, including an hourly breakdown for personnel services, projection of consulting services, and other related expenses such as communications, printing and publications, travel and conferences, office supplies, and capital outlay. Over the ten year term of the franchise, if costs and projections remain constant, the proposed expenditures by the City of Fridley will be approximately $202,500. In addition to this sum, the City of Fridley indicates, by itemized list, pre-operational expenses incurred thus far in excess of $15,000. This amount includes funds expended in the franchising process, both before and after the award of the franchise to General Television, and certain non-recurring "start-up" type expenses. The City of Fridley also indicates that there will be certain other pre-operational expenses which will, in all likelihood, consume the remainder of the acceptance fee paid by General Television. Total expenditures incurred and expected to be incurred by the City of Fridley over the term of the franchise will be in excess of $225,000. General Television has provided a ten year projection of its gross subscriber revenues and resultant franchise fee payments. It is predicted that the franchise fee will generate $3,500 for the City of Fridley in the first year, and rise to $17,500 annually by the tenth year. Total franchise fee revenues to the City of Fridley are projected to be $126,875. That amount added to the $25,000 acceptance fee equals a sum of $151,875, or substantially less than the projected cost to Fridley for its regulatory program.

3. We find the above fee arrangement to be acceptable under the current regulatory framework, in view of the detailed, extensive showing made by the City of Fridley and General Television. In *Hawkeye Cablevision, Inc.*, FCC 74-434, —— FCC 2d —— (1974), we accepted a similar showing from the franchisor and the franchisee demonstrating the reasonableness of a fee of five percent of gross subscriber revenues. The showing in the instant case has been as detailed and well documented. In the *Clarification of Cable Television Rules and Notice of Proposed Rule Making and Inquiry*, FCC 74-384, 39 Fed. Reg. 14,288 (1974), at paragraph 107 we indicated that fran-

[1] The proposed franchise fee is five percent of gross subscriber revenues, plus an acceptance fee of $25,000.

[2] We look forward to receiving from General Television the name of the official in charge of Fridley's regulatory program so that we may assist him in any way possible.

chisors will be permitted, upon a proper showing, to recover, in addition to annual regulatory costs, the actual expenses incurred in the granting of the franchise. In this instance the acceptance fee has been fully justified by detailed explanation of the costs. However, we caution that we will not sanction excessive fees in this area and will watch such charges for any evidence of abuse.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Hubbard Broadcasting, Inc., pursuant to Section 76.27" IS DISMISSED as moot.

IT IS FURTHER ORDERED, That the "Application for Certificate of Compliance" (CAC–1722), filed by General Television of Minnesota, Inc., IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-475

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
(a) MESSRS. JOHN GIANNETTI AND JOHN E. PALMER (TRANSFERORS) AND STATE MUTUAL LIFE ASSURANCE CO. OF AMERICA (TRANSFEREE) For Transfer of Control of Johns Communications, Inc., Licensee of Stations WNIC(AM&FM), Dearborn, Mich.	File No. BTC-7178
(b) RENEWAL OF LICENSES OF STATIONS WNIC-AM-FM, DEARBORN, MICH.	File Nos. BR-1412, BRH-587

ORDER

(Adopted May 1, 1974; released May 24, 1974)

BY THE COMMISSION: COMMISSIONERS WILEY, CHAIRMAN; REID AND HOOKS ACTING AS A BOARD; CHAIRMAN WILEY CONCURRING IN THE RESULT; COMMISSIONER HOOKS CONCURRING AND ISSUING A STATEMENT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission considered the above captioned applications for transfer of control of the licensee of Stations WNIC-AM&FM, Dearborn, Michigan and for renewal of licenses. Based upon a determination that the public interest, convenience and necessity would be served thereby, IT IS HEREBY ORDERED, that these applications ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

The majority Order santifying the transfer of control of WNIC-AM-FM (Johns Communications, Inc.) states that the ". . . public interests, convenience and necessity" would be served thereby.[1]

In view of the fact that this action is taken at a time when the transferors are delinquent in fully responding to an official Commission inquiry into possibly discriminatory employment practices, one relative enhancement of the public interest would appear to be the termination of the present licensee's control of the stations. For that reason, primarily, I concur with reluctance.

However, as I pointed out in my dissent in *Roy H. Park Broadcasting of Birmingham, Inc.* (FCC 73-649, June 13, 1973), there is precedent for deferring renewal and/or transfer applications when unresolved questions relating to the character of an applicant exist. *United Television Co., Inc.*, 40 F.C.C. 2d 472

[1] Such findings, both on renewal and transfer, are compulsory. See 47 U.S.C. §§ 309(a) and 310(b), respectively.

(1973). Inasmuch as I consider inequality in hiring and promotion practices to be inextricably linked to character qualifications, I am disfavorably disposed towards permitting a potential violator of our equal employment regulations[2] to simply "sell out" and avoid proper sanctions.

Accordingly, I will henceforth move to refuse the grant of an application if there exists any *prima facie* evidence of non-compliance with our equal employment opportunity rules.

[2] See, 47 CFR §§ 73.125, 73.301.

FCC 74-514

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re	
REQUEST FOR ORDER TO SHOW CAUSE TO BE DIRECTED AGAINST:	Docket No. 19949 CSC-44; PA433
HARRISBURG CABLEVISION, MIDDLETOWN, PA.	Docket No. 19950 CSC-45; PA428
HARRISBURG CABLEVISION, HIGHSPIRE, PA.	Docket No. 19951 CSC-46; PA438
HARRISBURG CABLEVISION, STEELTON, PA.	Docket No. 19952 CSC-47; PA431
HARRISBURG CABLEVISION, LOWER PAXTON TOWNSHIP, PA.	Docket No. 19953 CSC-48; PA36A
HARRISBURG CABLEVISION, WEST HANOVER TOWNSHIP, PA.	Docket No. 19954 CSC-49; PA440
HARRISBURG CABLEVISION, SWATARA TOWNSHIP, PA.	Docket No. 19955 CSC-50; PA430
HARRISBURG CABLEVISION, LOWER SWATARA TOWNSHIP, PA.	

MEMORANDUM OPINION AND ORDER

(Adopted May 15, 1974; Released May 28, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On March 8, 1974, the Commission released an Order to Show Cause in these proceedings (FCC 74-209, 45 FCC 2d 863) which directed Harrisburg Cablevision, operator of cable television systems at Middletown, Pennsylvania and 21 other communities in and around Harrisburg, Pennsylvania, to show cause why it should not be ordered, pursuant to Sections 312(b) and (c) and 409(a) of the Communications Act of 1934, as amended, to cease and desist from further violation of the Commission's signal carriage rules on the above-captioned cable television systems. Gateway Communications, Inc., licensee of Station WLYH-TV, Lancaster, Pennsylvania, had petitioned the Commission for issuance of such an Order.[1]

2. Prior to the date set for a prehearing conference, Cablevision filed a "Waiver of Hearing." Respondent's pleading, filed April 5, 1974, also requested that the Administrative Law Judge, in terminating the hearing proceeding and certifying the case to the Commission,

[1] Gateway's request for Order to Show Cause cited Cablevision's alleged violation of the Commission's signal carriage and network program exclusivity rules. In *Harrisburg Cablevision*, FCC 74-209, 45 FCC 2d 863, the Commission, *sua sponte*, partially waived its network program exclusivity rules to the extent that one CBS market affiliate need not be accorded priority over other CBS market affiliates carried on Cablevision's systems. The Commission made it clear, however, that the signals of these three CBS market affiliates shall be protected against simultaneous network duplication from distant grandfathered CBS affiliates.

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issue a recommendation that the proceeding be dismissed without the issuance of an order to cease and desist. In support of this request, Harrisburg Cablevision stated a) that it will institute proper carriage of Station WLYH–TV within 60 days, and b) that counsel for Gateway has expressed consent to this time schedule. Also offered in mitigation of its apparent violation of the Commission's Rules is an affidavit of Mr. Nathan A. Levine, Executive Vice President of Sammons Communications, Inc., the systems' owner. Mr. Levine's affidavit stresses the unique nature of the case and of the Harrisburg-Lancaster-York, Pennsylvania market television allocations, which were central to the Commission's partial waiver of its network program exclusivity rules. It is further maintained that Cablevision's refusal to add Station WLYH–TV to its 22 systems' carriage ". . . was based on a firm and honest belief that the public interest would not be served thereby and not on any intention to avoid compliance with unequivocal and clear Commission and public interest requirements."

3. By letter of April 10, 1974, the Cable Television Bureau stated it had no objection to the termination of the hearing proceeding, but recommended that the matter be remanded to the Commission for appropriate disposition. On April 11, 1974, the presiding Administrative Law Judge issued an order terminating the hearing proceeding and certifying the case to the Commission "for such action as it may deem appropriate."

4. Gateway sent Cablevision a request for full-time carriage (and network program exclusivity protection) on February 9, 1973. On March 28, 1973, Gateway filed with the Commission its "Petition for Issuance of Order to Show Cause." Not until April 5, 1974, after the issuance of the subject Order to Show Cause, did Cablevision agree to comply with the Gateway request and the Commission's Rules. Section 1.92(e) of the Commission's Rules provides as follows:

> Corrections or promise[s] to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

The Commission's bestowal of three UHF CBS network affiliates to the Harrisburg-Lancaster-York, Pennsylvania television market does not affect Station WLYH–TV's status as a "must-carry" signal on the subject systems (see Section 76.61 of the Rules, as incorporated by relevant Section 76.63). Carriage should not have been withheld. Despite Cablevision's statements in mitigation and justification and its assurance that the requisite carriage of Station WLYH–TV will soon be forthcoming, we are not persuaded that the public interest will be served by our termination of this proceeding without the issuance of a Cease and Desist Order. However, in view of Cablevision's stated intent to fully comply with Section 76.63 of the Rules by June 5, 1974, our Order shall become effective on that date.

Accordingly, IT IS ORDERED, That Harrisburg Cablevision, no later than June 5, 1974, CEASE AND DESIST from further violation of Section 76.63 of the Commission's Rules on the captioned cable

television systems; provided, however, that if Harrisburg Cablevision notifies the Commission within two (2) days of the release date of this Memorandum Opinion and Order (exclusive of Saturdays, Sundays, and holidays, if any) that it intends to seek judicial stay within fourteen (14) days of the release date of this Order, this Order shall be stayed for thirty-five (35) days from its release date or until judicial determination of a stay motion, whichever occurs first.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS, *Secretary.*

FCC 74R–205

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
HENDERSON BROADCASTING CO., INC., BLOOMINGTON, IND.	Docket No. 19813 File No. BPH–7946
INDIANA COMMUNICATIONS, INC., BLOOMINGTON, IND.	Docket No. 19814 File No. BPH–8030
BLOOMINGTON MEDIA CORP., BLOOMINGTON, IND.	Docket No. 19815 File No. BPH–8032
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted June 3, 1974; Released June 4, 1974)

BY THE REVIEW BOARD:

1. This proceeding involves the mutually exclusive applications of Henderson Broadcasting Co., Inc., Indiana Communications, Inc. (ICI), and Bloomington Media Corporation (BMC), for authorization to construct a new FM broadcast station on Channel 244A in Bloomington, Indiana. These applications were designated for consolidated hearing on a standard comparative issue by Commission Order, FCC 73–929, 38 FR 26406, published September 20, 1973. Presently before the Review Board are a motion for leave to file further motion to enlarge issues and a further motion to enlarge issues, both filed on January 31, 1974, by BMC.[1] In these motions, BMC requests that the following issues be added against ICI:

> 1. To determine whether ICI President, Director, largest shareholder and proposed General Manager, Rolland C. Johnson, in his official capacity as a faculty member of Indiana University at Bloomington, engaged, in the courses taught by him in the Department of Radio and Television in the Spring semester of 1972, in improper, unethical or proscribed conduct and if so, to determine the impact of such conduct on the ICI application and on the basic or comparative character qualifications of ICI as an applicant.
>
> 2. To determine whether (a) the pursuit of private interests by ICI and Dr. Johnson and (b) Dr. Johnson's use of his continuing position as a paid full-time faculty member of Indiana University at Bloomington has given and/or will give rise to a conflict of

[1] Also before the Board are: (a) opposition to motion for leave to file further motion to enlarge issues, filed March 1, 1974, by Indiana Communications, Inc.; (b) opposition to further motion to enlarge issues, filed March 1, 1974, by Indiana Communications, Inc.; (c) opposition to further motion to enlarge issues, filed March 1, 1974, by the Broadcast Bureau; (d) supplement to opposition, filed March 4, 1974, by the Broadcast Bureau; and (e) reply to oppositions, filed March 27, 1974, by Bloomington Media Corporation.

interest and if so, to determine the impact of such conflict on the basic or comparative character qualifications of ICI as an applicant.

3. To determine whether ICI has attempted to conceal from or failed to disclose to the Commission all the circumstances of the use of students at Indiana University at Bloomington in connection with the preparation of ICI's application, in violation of Section 1.514 of the Commission's Rules.

4. To determine, in the light of evidence adduced pursuant to the foregoing issues, whether ICI has the requisite character to be a Commission licensee, and the effect of such evidence on ICI's comparative qualifications to be a Commission licensee.

2. In its further motion to enlarge, BMC observes that ICI president, director and proposed general manager, Dr. Rolland C. Johnson, is an assistant professor in the Department of Radio and Television of Indiana University at Bloomington (IU). In the spring semester of 1972, BMC states, Dr. Johnson assigned students in his course, Radio and Television Advertising (R–304), to prepare reports relating to the establishment and operation of a hypothetical new FM station on Channel 244A, Bloomington. This project was assigned, BMC alleges, at the same time Dr. Johnson was preparing the application of ICI for the identical facility. BMC asserts that this assignment departed from the scope of the course as described in the IU course catalogue, and was therefore a violation of several faculty responsibility provisions of the *IU Academic Handbook*.[2] In support of this allegation, BMC submits the affidavits of two students who took course R–304 during the spring of 1972. The students aver that R–304 substantially departed from its catalogue description. Petitioner next submits 10 reports which were prepared by students in R–304. Although it concedes that it does not know to what extent ICI relied on these reports in preparing its application for Channel 244A, BMC alleges that "clear parallels" exist between recommendations in those reports and the ICI proposal. For example, petitioner notes, seven of the ten reports suggest a rock music format and ICI proposes 45% rock music; two reports suggest news and public affairs programming at 6:00 or 6:30 p.m., and ICI proposes such programming at 6:30 p.m.; five reports suggest numerous public affairs announcements which ICI also proposes; and four reports suggest substantial amounts of religious programming on Sunday morning and ICI proposes 2½ hours of religious programming at that time. In light of these similarities, BMC alleges that ICI has violated Section 1.514 of the Commission's Rules, by failing to reveal to the Commission the full extent of its reliance on student material in the preparation of its application. BMC also suggests that these similarities raise questions as to whether Dr. Johnson has abided by the direction of the

[2] BMC submits copies of the IU course catalogue and the *IU Academic Handbook*. The catalogue description for R–304 for the spring of 1972 semester was as follows: "Principles of network, national spot, and local radio and television advertising; roles of advertising agency, station representative, time buyer." The *Handbook* sections in question require that course material be "clearly connected" to the advance description of the course, and that teachers not subject students to discussion of topics irrelevant to the course.

Handbook that faculty members not exploit students for private advantage, or allow their outside interests to conflict with their obligations to IU and their students. Conflict of interest questions are also raised, BMC alleges, by the fact that during the spring of 1972, Dr. Johnson was preparing community ascertainment surveys while students in another of his classes, Broadcast Station Management and Programming (R–406), were also preparing such studies as class projects.

3. BMC concedes in its motion for leave that the subject request is late-filed. Petitioner also concedes that, based on the student reports, it suspected that Dr. Johnson's conduct was improper "well before" it filed these motions. Nevertheless, BMC argues that good cause exists for late filing since it chose to fully and discreetly investigate its suspicions of improper conduct, rather than prematurely file for issues which might have caused Dr. Johnson unfair embarrassment.[3] However, in the event good cause is not found, BMC argues that its allegations raise serious public interest questions, which require that this pleading be accepted for consideration under *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966).

4. In opposition, ICI argues that BMC has not exercised due diligence in the filing of its request. Specifically, ICI notes that the information upon which this motion is based was either readily available to petitioner, or in its possession, prior to the last date for filing timely motions. Moreover, ICI asserts that after completing its investigation, BMC unjustifiably delayed an additional 27 days before filing. Turning to the merits, ICI states that examination of the "clear parallels" between information contained in the student reports and ICI's application establishes that they are easily accounted for in each case. For example, ICI asserts, news programming between 6:00 and 7:30, Sunday morning religious programming, and the presentation of public service announcements are explained as universal broadcast practices. Other parallels, it is alleged, are rendered meaningless when viewed in their proper context. Thus, ICI contends, the fact that seven of ten students recommend a rock music format and ICI proposes 45% rock music is "not surprising" in a university town with 30,000 students. In further support of its opposition, ICI submits several attachments. In an affidavit, Dr. Johnson offers an explanation of his purposes and activities in relation to the teaching of course R–304, and an unequivocal denial of any use of student reports in connection with the ICI application.[4] ICI also proffers a supplemental course statement which gives a more detailed description of R–304 and asserts that this supplement was available to all students prior to the commencement of R–304. ICI also submits a letter from the Acting Chairman of the Department of Radio and Television at IU, which states that "there was no conflict of interest in this matter", and a letter affi-

[3] BMC's investigation consisted of obtaining a 1972 IU course catalogue and a copy of the *IU Academic Handbook*. In addition, BMC president Frank A. Rodgers met with Paul E. Klinge, Assistant to the President of IU. On the basis of this meeting, BMC states, it concluded that serious questions were raised by Dr. Johnson's conduct.

[4] The Johnson affidavit also notes that BMC erred in stating that during the spring of 1972 he taught R–406. Professor Johnson denies that he taught this course or assigned ascertainment studies to such class.

davit from Paul E. Klinge, who states that "Dr. Johnson's conduct has not been considered improper" by the department or by the Dean of Liberal Arts and Sciences. Mr. Klinge also denies the asserted implication of the Rodgers affidavit that he believed that Dr. Johnson's conduct was improper. In contrast to the sworn statements it has submitted, ICI notes, BMC has failed to submit affidavits from any official of IU which would support the charge that Dr. Johnson engaged in improper conduct. ICI asserts that this failure is a violation of Section 1.229(c) of the Commission's Rules.[5]

5. The subject petition is filed nineteen weeks late and good cause for late filing has not been established. BMC concedes that the student reports were in its possession prior to the last date for timely filing; it is evident that the other materials relied upon were also readily available for consultation at an earlier date; and no reason is shown as to why Mr. Klinge could not have been interviewed at an earlier time. See *Industrial Business Corp.*, 40 FCC 2d 69, 26 RR 2d 1447 (1973). Moreover, no adequate explanation is offered for the additional delay of 27 days between the completion of ICI's investigation and the date the instant motion was filed. Nevertheless, pursuant to *The Edgefield-Saluda Radio Co., supra*, we will consider this motion since it raises serious public interest questions. However, upon consideration of the merits, the Board finds that the requested issues are unwarranted.

6. To begin with, BMC's allegations are insufficiently supported. That is, BMC has failed to offer a personal affidavit or letter from an IU official supporting the claim that university standards of conduct for faculty members were violated, or that a conflict of interest existed. The sole substantive basis for the addition of an issue are two student affidavits, and the copies of IU publications. However, this evidence only goes to the question of variance between the content of R-304 and its catalogue description. In our view, this variance alone is not sufficiently serious to justify the addition of character issues. Furthermore, the similarities between the recommendations in the student reports and the ICI application do not support the claims that ICI improperly relied upon the recommendations and was less than candid with the Commission in failing to detail such use. Examination of these recommendations demonstrates that they are so general, and in some instances so common to universal broadcasting practice, that any similarities do not even *prima facie* establish reliance thereon by ICI. In any event, they fail to cast doubt on Dr. Johnson's sworn statement that he did not improperly use those reports. In addition, the allegation pertaining to possible reliance on student ascertainment reports is so imprecise that it fails to comport with the requirements of Section 1.229(c) of the Commission's Rules. Finally, insofar as BMC ultimately requests that the Board review the *IU Handbook* and make its own determination that a violation of faculty standards of conduct has occurred, we shall decline to do so. Interpretation of the IU faculty code is more appropriate for IU itself. *Cf. Sumiton Broadcasting Co.*, 15 FCC 2d 410, 14 RR 2d 970 (1968). In fact, to the extent that

[5] The Broadcast Bureau opposes these motions on substantially similar grounds.

the materials ICI has submitted indicate that IU has made such a determination, we note that Dr. Johnson's conduct has not been found lacking. For the above reasons, the further motion to enlarge issues must be denied in its entirety.

7. Accordingly, IT IS ORDERED, That the motion for leave to file further motion to enlarge issues, filed January 31, 1974, by Bloomington Media Corporation, IS GRANTED; and that the further motion to enlarge issues, filed January 31, 1974, by Bloomington Media Corporation, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-511

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
HIGH FIDELITY CABLE TELEVISION	
LENOX, MASS.	CAC-300, MA010
STOCKBRIDGE, MASS.	CAC-301, MA011
GREAT BARRINGTON, MASS.	CAC-302, MA008
LEE, MASS.	CAC-303, MA009
For Certificates of Compliance	
SPRINGFIELD TELEVISION BROADCASTING CORP.,	CSR-135
SPRINGFIELD, MASS.	CSR-136
Petition for Special Relief	CSR-137
	CSR-138

MEMORANDUM OPINION AND ORDER

(Adopted May 15, 1974; Released May 23, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. High Fidelity Cable Television operates cable television systems at the above-captioned communities. Lenox, Stockbridge, and Lee are located within the Albany-Schenectady-Troy, New York, major television market (#34), Great Barrington is located in the smaller television market of Adams, Massachusetts.[1] The systems now provide their subscribers with the following television broadcast signals:

WTIC (CBS, channel 3), Hartford, Connecticut
WHNB-TV (NBC, channel 30), New Britain, Connecticut
WAST (ABC, channel 13), Albany, New York
WRGB (NBC, channel 6), Schenectady, New York
WTEN (CBS, channel 10), Albany, New York
WTNH-TV (ABC, channel 8), New Haven, Connecticut
WWLP (NBC, channel 22), Springfield, Massachusetts
WGBY-TV (Educational channel 57), Springfield, Massachusetts

The systems at Stockbridge, Great Barrington, and Lee also provide the following television broadcast signals for which High Fidelity now requests certification on its system at Lenox:[2]

[1] In its applications, High Fidelity asserts that Stockbridge, Lee, and Great Barrington are outside of all television markets. However, staff analysis clearly shows that the market position of the four communities is as indicated in paragraph 1.

[2] All of the above-captioned communities are served by a common headend located at Great Barrington. The difference in television signal carriage results from the fact that the Lenox system was subject to the major market hearing provisions of former Section 74.1107. In 1968, when the Lenox system sought to carry the New York independent signals, such carriage was prevented by the rules then in effect with respect to major market systems. The other three communities were authorized carriage of the New York City signals pursuant to former Section 74.1105.

WNEW–TV (independent, channel 5), New York, New York
WPIX (independent, channel 11), New York, New York
WOR–TV (independent, channel 9), New York, New York

Additionally, High Fidelity has filed applications for certificates of compliance to add to each of the above-captioned systems the following television broadcast signals:

WHYN–TV (ABC, channel 40), Springfield, Massachusetts
WMHT (educational, channel 17), Schenectady, New York

Carriage of Station WMHT is consistent with Sections 76.59(c) and 76.61(d) of the Commission's Rules.

2. In its application for Lenox, High Fidelity requests a waiver of Section 76.61(b)(2) of the Rules to permit carriage of the New York independent stations listed above. This request involves a waiver of the leapfrog limitations of Section 76.61(b)(2) as well as the provision requiring carriage of at least one UHF station where three distant independent stations are to be carried.[3] High Fidelity's request for waiver is opposed by Sonderling Broadcasting Corporation, licensee of Station WAST, Albany, New York, Albany Television, Inc., licensee of Station WTEN, Albany, New York, and Springfield Television Broadcasting Corporation, licensee of Stations WWLP Springfield, Massachusetts, and WRLP, Greenfield, Massachusetts.[4] High Fidelity has replied.

3. In support of its request to carry the subject New York independent stations on its cable system at Lenox, High Fidelity states the following: (a) Lenox is but one small community out of four served by an integrated and already operational CATV system;[5] (b) the signals requested are already available to subscribers in the other three communities; (c) the signals requested are already available to subscribers of other CATV systems in the same area; (d) the number of subscribers affected would be small; (e) there is an expressed desire on the part of both the public and local franchising authorities for equality of CATV service in the area; (f) the distance involved in placing Lenox within the 35-mile zone of Troy, New York, is small; and (g) High Fidelity's original distant signal waiver petition was caught in the "freeze" effective in 1968 with respect to major market systems, thereby preventing carriage of the New York independent signals on its Lenox system.

4. The opposing parties argue that High Fidelity has not made the substantial showing required to justify waiver of the Commission's Rules. Furthermore, such waiver would erode the Commission's policy of insuring that UHF stations share in the benefits of cable carriage.

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[3] Section 76.61(b)(2) states, in pertinent part: "That if [distant independent] signals of stations in the first 25 major television markets . . . are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two closest such markets, where such signals are available. If a third additional signal may be carried, a system shall carry the signal of any independent UHF television station located within 200 air miles of the reference point for the community of the system . . . ."

[4] The objection of Springfield Television Broadcasting Corporation was untimely filed and therefore not entitled to consideration in the certificating process pursuant to Section 76.27 of the Rules. However, since the arguments presented by Springfield are similar to those presented by the other objecting parties, they are being considered in this proceeding.

[5] The population and subscriber figures for the communities served by High Fidelity's systems are as follows:

See Commission Proposals for Regulation of Cable Television, FCC 71–787, 31 FCC 2d 115, 122 (1971).

	Population	Subscribers
Lenox	5,804	328
Stockbridge	2,312	259
Great Barrington	7,537	1,668
Lee	6,426	1,155
Total	22,079	3,410

NOTE—Figures are as of December 31, 1972.

5. In paragraph 112 of *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 186 (1972), the Commission stated that "the carriage rules reflect our determination of what is, at this time, in the public interest with respect to cable carriage of local and distant signals," and "we have no intention of re-evaluating on request of cable systems in individual proceedings the general questions settled in our carriage and exclusivity rules." In this case, High Fidelity has not made the substantial showing necessary to persuade the Commission that it should digress from the determinations set out in the Rules regarding the carriage of distant independent television stations. *Moshannon Valley TV Cable Co., Inc.*, FCC 73–1206, 43 FCC 2d 1190 (1973). High Fidelity does not present a unique situation where compliance with the Commission's Rules would result in serious hardships. When the carriage rules were adopted, the Commission recognized that in some cases, such as the one at hand, where a cable system is located on the periphery of a major market, strict application of the carriage rules might lead to anomalous results. Yet, to grant waivers in every such situation would seriously undermine the application of the Rules and contradict our policy quoted above. Therefore, High Fidelity's request for waiver must be denied.[6]

6. High Fidelity requests certification to add carriage of Station WHYN–TV, Springfield, Massachusetts, to each of its above-referenced cable television systems. This request is not opposed. High Fidelity admits that carriage of WHYN–TV on its system at Lenox is not authorized by Section 76.61 of the Commission's Rules, but requests a waiver so that service will be equalized on each of its four systems served by a common headend. Since we have determined that Stockbridge and Lee lie within the Albany-Schenectady-Troy market as well as Lenox (see footnote 1). Section 76.61 of the Rules also ap-

[6] In *Commission on Cable Television of the State of New York*, FCC 73–1148, 43 FCC 2d 826 (1973), *recons. denied*, FCC 74–99, 45 FCC 2d 283 (released February 8, 1974), the Commission granted special relief to allow carriage of New York City independent stations on New York cable systems located within the Albany-Schenectady-Troy television market. The Commission's decision in that case was predicated upon the community of interest which exists between New York State television viewers and New York City. The community of interest rationale is inapposite to the instant proceeding which concerns a cable system serving Massachusetts viewers. Faith Center, licensee of Station WHCT–TV, Hartford, Connecticut, in a comment on High Fidelity's Lenox application, requests that WHCT–TV be carried in addition to the New York stations for which carriage is sought. Station WHCT–TV is an independent UHF television station located outside of the Albany-Schenectady-Troy television market and has no right to carriage on the Lenox system under the Commission's Rules. In our reconsideration of *Commission on Cable Television of the State of New York, supra*, we denied Faith Center's request for preferential carriage in the Albany-Schenectady-Troy market. The Commission's determination in the above-cited case applies equally here, and Faith Center's request will be denied.

plies to those systems. Carriage of WHYN–TV is thus permitted only on the system at Great Barrington.[7] For the reasons advanced in paragraph 5, *supra*, we decline to grant a waiver of Section 76.61 to permit carriage of WHYN–TV on High Fidelity's systems at Lenox, Stockbridge, and Lee.[8]

7. Springfield Television Broadcasting Corporation, licensee of Stations WWLP, Springfield, Massachusetts, and WLRP, Greenfield, Massachusetts, has filed a petition for special relief in which it requests that WWLP, presently carried on High Fidelity's cable systems, be afforded network program exclusivity with respect to Station WRGB, Schenectady, New York. Stations WWLP and WRGB are both NBC network affiliates. This petition for special relief is opposed by High Fidelity and General Electric Broadcasting Company, Inc., licensee of Station WRGB, Schenectady, New York.

8. Springfield supports its petition for special relief with the following statements: (a) High Fidelity's cable systems lie only slightly outside the Springfield television market; (b) the areas in which High Fidelity operates have a greater community of interest with Springfield than with Schenectady, and the programming of WWLP is oriented more toward the needs and interests of High Fidelity's subscribers than is the programming of WRGB; (c) network program exclusivity protection would provide WWLP with a meaningful addition to its overall audience circulation which would be translated into approximately $4,550 per year of additional advertising revenues—these additional revenues could be used to improve and expand WWLP's local programming in western Massachusetts; (d) the Commission's policy of encouraging the growth of UHF stations such as WWLP would be served by the provision of network exclusivity protection over the programming of WRGB, a VHF broadcast station; (e) a grant of Springfield's petition for special relief would not result in any loss of program service to High Fidelity's subscribers.

9. In response to Springfield's request, High Fidelity and GE argue that (a) Springfield has made no showing of need for the increased revenues which might be realized by a grant of its request; and (b) Springfield's community of interest argument is irrelevant since the local programming of both stations would be carried in any event.

10. According to the provisions of Section 76.91 of the Commission's Rules, the signal of WRGB is of at least equal priority with that of WWLP on each of High Fidelity's cable systems. Therefore, on those systems, WWLP is not entitled to network program exclusivity over the programming of WRGB. The Commission's exclusivity rules were designed to protect local television broadcast stations from viewing audience erosion brought about by the carriage of duplicating distant television signals on cable systems. Springfield now asks the Commis-

[7] Section 76.59(a)(3) of the Commission's Rules permits smaller market cable systems to carry television stations which are licensed to other smaller television markets and which cast a Grade B contour over the community in which the cable system is located.

[8] In its application for Lenox, High Fidelity requests a waiver of the access provisions of Section 76.251(c) of the Commission's Rules. Since carriage of the four distant commercial signals is denied, Section 76.251(c) is not applicable and High Fidelity's request for waiver of that rule will be dismissed as moot.

sion to waive its rules so that WWLP may increase its audience by having some of the programming of a competing television station blacked out on High Fidelity's cable systems. We have previously stated that we had no policy of giving UHF stations more favorable treatment in terms of exclusivity protection than VHF stations. *Danville Cablevision Co.*, FCC 73–1176, 44 FCC 2d 554 (1973). Additionally, Springfield has failed to make the kind of factual showing which the Commission regards as necessary to warrant waiver of its rules. *See Central New York Cable TV, Inc.*, FCC 67–1381, 11 FCC 2d 150 (1967).

11. Although not raised in the objections, we note that High Fidelity is presently carrying without apparent authority the distant signal of Station WTNH–TV, New Haven, Connecticut, on its Lenox system. High Fidelity asserts that WTNH–TV was first carried in response to a request from the station which alleged that the station placed a Grade B signal over High Fidelity's cable television systems, in which case carriage of the signal was consistent with the Commission's Rules then in effect and would now be grandfathered under our present Rules. A copy of a letter dated April 1, 1970, in which WTNH–TV requests carriage has been provided by High Fidelity. No evidence has been presented to show that Station WTNH–TV has ever cast a predicted Grade B signal over the subject cable systems and its carriage is in violation of the Commission's Rules. Nevertheless, the signal was apparently added in good faith, no "local" television broadcast station has objected to its carriage, the community involved is small, and High Fidelity's subscribers have presumably become accustomed to WTNH–TV's programming. In light of these considerations, we do not believe that the public interest requires WTNH–TV to be deleted from High Fidelity's cable systems. Therefore, we will grant High Fidelity special relief to continue the carriage of WTNH–TV. *Coldwater Cablevision, Inc.*, FCC 71–793, 31 FCC 2d 17 (1971); *Southern Illinois Cable TV Co.*, FCC 73–1274, 44 FCC 2d 460 (1973); *Tele-Media Company of Lake Erie*, FCC 74–120, —— FCC 2d —— (released February 12, 1974).

In view of the foregoing, the Commission finds that a grant of the subject applications, to the extent indicated above, and a denial of the subject requests for waiver and petition for special relief is consistent with the public interest.

Accordingly, IT IS ORDERED, That the requests for waiver of Sections 76.61 and 76.251(c) of the Commission's Rules, filed by High Fidelity Cable Television, ARE DENIED.

IT IS FURTHER ORDERED, That the request for carriage filed by Faith Center, licensee of Station WHCT–TV, Hartford, Connecticut IS DENIED.

IT IS FURTHER ORDERED, That the petition for special relief for a waiver of Section 76.91 of the Commission's Rules, filed by Springfield Television Broadcasting Corporation, IS DENIED.

IT IS FURTHER ORDERED, That the oppositions to the subject applications and petition for special relief filed by Sonderling Broadcasting Corporation, Albany Television, Inc., Springfield Television

Broadcasting Company, and High Fidelity Cable Television, ARE GRANTED to the extent reflected above and in all other respects ARE DENIED.

IS IS FURTHER ORDERED, That the "Application[s] for Certificates[s] of Compliance" (CAC–300 through 303) filed by High Fidelity Cable Television, ARE GRANTED to the extent indicated above, and in all other respects ARE DENIED, and the appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-503

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
KTVO, INC.
Concerning renewal of license for Station
KTVO, Kirksville, Mo.

MAY 14, 1974.

KTVO, INC.,
209 East Second St.,
Ottumwa, Iowa 52501

GENTLEMEN: This refers to your application (BRCT-258) filed October 30, 1973, for renewal of your license for television broadcast station KTVO, channel 3, Kirksville, Missouri-Ottumwa, Iowa.

The Commission has this date granted your request for renewal of your license. It appears, from the Commission's files, that your auxiliary studio in Ottumwa in terms of equipment, program origination, and number of employees, is, in fact, being used as your main studio. Section 73.613(a) of the Commission's rules requires a licensee's main studio to be located within its city of license. Section 73.613(b) of the rules provides for the location of a television station's main studio outside of its community of license only when an adequate showing is made (a) that good cause exists; and (b) that so locating would be consistent with the operation of the station in the public interest. The Commission is aware of your belief that you made a full disclosure of your main studio situation at the time you filed for authorization to identify as a Kirksville-Ottumwa station. It should be emphasized, however, that no previous action or inaction by the Commission can be construed as a ratification or approval of your utilizing your auxiliary studio in Ottumwa as your main studio. Furthermore, at the time the Commission granted your request for waiver of section 73.652(a) of the rules, permitting you to identify station KTVO as a Kirksville-Ottumwa station, the Commission clearly stated ". . . this action does *not* modify your license, change the station location as specified in your license, or change your obligation to your principal city, Kirksville, in any way."

In view of the foregoing, you are directed to bring yourself into compliance with the Commission's rules by originating more than 50 percent of your local programming, exclusive of network programs, from your main studio as specified in your license. This action should be completed within six months of this date. In addition, in future license renewals you will be required to show the Commission that an appropriate emphasis has been placed on the needs and interests of Kirksville, your principal city.

Commissioner Quello did not participate.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-519

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of LINCOLN CABLEVISION, INC., LINCOLN, ILL. For Certificate of Compliance	CAC-1277 IL033

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. Lincoln Cablevision, Inc., has filed the above-captioned application for certification to operate a new cable television system at Lincoln, Illinois.[1] Lincoln proposes carriage of the following television broadcast stations:

WCIA (CBS, channel 3), Champaign, Illinois
WAND (ABC, channel 17), Decatur, Illinois
WICS (NBC, channel 20), Springfield, Illinois
WILL-TV (educational, channel 12), Urbana, Illinois
WRAU-TV (ABC, Channel 19), Peoria, Illinois
WEEK-TV (NBC, channel 25), Peoria, Illinois
WMBD-TV (CBS, channel 31), Peoria, Illinois
WGN-TV (independent, channel 9), Chicago, Illinois
KPLR-TV (independent, channel 11), St. Louis, Missouri

This proposal is consistent with Section 76.63(a) of the Commission's Rules. Additionally, Lincoln plans to construct a 24-channel capacity system and to provide subscribers with the full complement of access facilities and services required by Section 76.251. Lincoln's franchise, awarded July 17, 1972, is fully consistent with Sections 76.31(a)(2)-(a)(6) and 76.31(b) of the Rules.

2. Lincoln's application is opposed by Central Cable System, Inc., the losing applicant for a cable television franchise from the City of Lincoln. Additionally, Central has filed a "Petition for Special Relief" asserting that ownership interests in Lincoln violate Section 76.501 of the Rules. Lincoln has replied to Central's opposition and has filed an opposition to Central's special relief petition.

3. Lincoln Cablevision, Inc., (originally Quincy Cablevision, Inc.), was formerly a joint venture between Continental Cablevision, Inc., (with a 56 percent ownership interest), and Quincy Newspapers, Inc., (with a 44 percent ownership interest). Twenty-five of Quincy Newspapers' 42 shareholders own a 38.5 percent interest in Lindsay-Schaub Newspapers, Inc. Lindsay-Schaub, in turn, holds 20 percent of the

[1] Lincoln, located in the Springfield-Decatur-Champaign-Jacksonville, Illinois, television market (#64); has a population of 17,582 (1970 census).

voting stock of Midwest Television, Inc., licensee of Television Broadcast Stations WCIA, Champaign, Illinois, and WMBD–TV, Peoria, Illinois. WCIA and WMBD–TV both place predicted Grade B contours over the City of Lincoln. This pattern of cross-ownership prompted Central to file its petition asserting a violation of Section 76.501. Subsequently, however, Lincoln's application was amended to reflect the fact that Quincy Newspapers had divested its interest in the system, and that the system had become a wholly-owned subsidiary of Continental Cablevision, Inc. In view of this ownership change, the cross-interests allegedly held in violation of Section 76.501 no longer exist, the arguments raised by Central in its "Petition for Special Relief" have become moot, and that petition will be dismissed.

4. In its opposition, Central contends that the procedures utilized by the City of Lincoln in awarding a franchise to Lincoln are inconsistent with the requirements of Section 76.31(a)(1) of our Rules, and that those procedures deprived Central of due process. In support, Central makes the following assertions:

> (1) On June 19, 1972, the City Council of Lincoln adopted a cable television ordinance and voted to invite "bids" from two competing applicants, Lincoln and Central.
>
> (2) On June 21, 1972, the City Clerk of Lincoln forwarded copies of the ordinance to the two applicants and informed them that the above-described bids had to be submitted on or before July 17, 1972. Lincoln and Central each submitted bids on that date.
>
> (3) The City Council of Lincoln had a "standard policy" of not acting upon matters of substantial importance to the city during the same meeting at which such matters were first considered. During the week of July 10, 1972, the Mayor of Lincoln informed a representative of Central that, pursuant to this policy, the city council definitely would not act upon the cable franchise applications at its July 17, 1972 meeting.
>
> (4) Relying upon the mayor's assurance and the council's continued adherence to the above-described "standard policy," Central did not appear and was not represented at the July 17, 1972 meeting.
>
> (5) Contrary to the mayor's assurance and to its "standard policy," the city council considered and acted upon the applications at its July 17, 1972 meeting and awarded a franchise to Lincoln.

Central contends that the above-described procedures violate Section 76.31(a)(1) and are inconsistent with the standards set forth in Paragraph 178 of the *Report and Order*[2] because (a) the bids submitted by Lincoln and Central were not placed on public file and were not the subject of any form of public notice; (b) the qualifications of Lincoln and Central were not considered by the city council in the context of a full public proceeding affording due process; and (c) no report or statement of any kind was issued by the city council setting forth the basis for its award of a franchise to Lincoln.

[2] *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 207–08 (1972).

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5. Responding to Central's objection, Lincoln submits copies of minutes of meetings of the Lincoln City Council held between March 15, 1971, and July 17, 1972, and copies of newspaper articles publicizing actions taken at those meetings. These documents indicate that the issue of cable television service, including consideration of the qualifications of various applicants proposing to provide such service, was the subject of extensive council debate over a period of 16 months.[3] The documents reveal, further, that Lincoln and Central participated extensively in these proceedings, and that the council's request for the submission of "bids" by July 17 was intended primarily to enable the applicants to propose initial subscriber rates and installation charges.[4]

6. In reply, Central concedes that the proceedings held by the city council between March, 1971 and June, 1972 were fully consistent with the standards of due process and with the requirements of Section 76.31(a)(1) of our Rules. Central asserts, however, that the public nature of these proceedings is "largely irrelevant" because they related to Central's and Lincoln's original applications, which were "materially revised" by the July 17 bids. Central argues that in addition to its "bid," it submitted a revision of its non-broadcast proposal which should have been considered in the context of public proceedings as fully as the original applications.

7. In response, Lincoln reasserts its contentions that the qualifications of both applicants were considered in detail as part of an extended proceeding involving numerous public hearings, and that the submission of "bids," as the final step of a long evaluative process did not impose an obligation upon the council to reschedule extensive public proceedings to comply with our Rules.

8. In Paragraph 178 of the *Cable Television Report and Order*, *supra*, we outlined our expectations regarding procedures we hoped local authorities would utilize in awarding cable television franchises:

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[3] The Lincoln City Council meets at 7:30 p.m. on the first and third Monday of every month. All meetings are open to the public.

[4] Both firms submitted proposals to the council on November 16, 1971. These proposals were referred to the council's Finance Committee which, on December 20, 1971, recommended that a franchise be awarded to Central. A motion to adopt the committee's recommendation was tabled because most council members concluded that a franchise should not be awarded until a cable television ordinance had been drafted and enacted. On March 20, 1972, the council adopted a resolution creating a nine-member committee to draft a cable ordinance. This committee consisted of five city councilmen, one educator, one clergyman, one representative of the chamber of commerce, and the city attorney. The cable committee completed its work in May, 1972, and on June 19, 1972, the city council enacted the committee's ordinance and voted to "invite bids" from Central and Lincoln. On June 21, 1972, the city clerk forwarded copies of the ordinance to the two firms and informed them that "sealed bids" (to be made by supplying installation charge and subscriber rate figures) would have to be submitted by July 17, 1972. Both firms submitted such bids on July 17. In addition to its bid, Central submitted an unsolicited revision of its original proposal, offering to provide a police and fire "surveillance system," an "emergency alert system," an automated news and weather channel, and a cable origination channel. Both bids were opened by the council at its July 17 meeting, and a resolution was adopted to reopen discussion of the original motion to award a franchise to Central. During this discussion, a majority of the council concluded that, although Central had proposed slightly lower subscriber rates and more non-broadcast programming than Lincoln, the former applicant had no operating experience. Additionally, it was pointed out that one of Central's principals was an absentee, residing in California, and that the other principal was "of a good age." The council defeated the motion to award a franchise to Central and adopted a resolution awarding a franchise to Lincoln. There was some discussion of the council's policy of not acting upon important matters during the same meeting at which such matters were first presented. A majority of the council, however, adopted the view that this policy was not applicable because the subject of the award of a cable television franchise had been under consideration for 16 months.

> We expect that franchising authorities will publicly invite applications, that all applications will be placed on public file, that notice of such filings will be given, that where appropriate a public hearing will be held to afford all interested persons an opportunity to testify on the qualifications of the applicants, and that the franchising authority will issue a public report setting forth the basis for its action. Such public participation in the franchising process is necessary to assure that the needs and desires of all segments of the community are carefully considered.

In Paragraphs 50 and 51 of the *Clarification of the Cable Television Rules and Notice of Proposed Rule Making and Inquiry*, FCC 74–384, —— FCC 2d —— (1974), we reiterated these expectations and indicated the scope of review we would afford to parties dissatisfied with franchising procedures utilized by particular local authorities:

> 50. We think that the intent of Section 76.31(a)(1) is clear. Prior to the selection of a franchisee, we expect the franchising authority to investigate the applicant's legal, character, financial, technical, and other pertinent qualifications. We also require that the public be given the opportunity to become involved in this process. There are many ways that this can be done. Many of the larger cities have had comprehensive hearings on the design of a cable ordinance. Others have established citizens' committees which held open publicized meetings and reported back their findings to the local authorities. Smaller localities, as a rule, have confined the process to their regular city council meetings. All of these methods are presently acceptable.
>
> 51. The purpose of our present rule is to assure that the public has been given notice and a right to be heard regarding the development of cable television in any particular area. We, of course, cannot guarantee nor would it be possible to require that all public input be heeded or adopted. We do not intend to act as a "court of last resort" for those who disagree with the decisions of their elected officials. Our present requirement for public proceedings is administered on the basis of a "reasonable man" standard. So long as the public has been given a reasonable opportunity to participate in the franchising process, we currently consider our "public proceeding" requirement as having been met. We presume the regularity of action by local officials. Except in the extraordinary case, if local officials assure us that they have made appropriate investigations of the franchisee's qualifications and that the public has had an opportunity to participate in the process we will not delve further into the particular methodology or decision factors in any specific franchise grant.

9. Employing the above-described "reasonable man" standard, we have concluded that the procedures utilized by the City of Lincoln in awarding a franchise to Lincoln were fully consistent with the requirements imposed by Section 76.31(a)(1). The record indicates and Central concedes: (1) that the Lincoln City Council conducted an inquiry spanning a 16-month period; (2) that the subject of cable television systems in general, as well as the qualifications of particular

applicants to operate such systems, was adequately examined during this inquiry; and (3) that the proceedings held during the inquiry were sufficiently "public" and sufficiently "participatory" to comply with our Rules. Central's arguments are based upon its contention that its unsolicited revised non-broadcast proposal, submitted on the afternoon of July 17, 1972, nullified all proceedings conducted by the city council up to that point and obligated the council to commence, *de novo*, its entire franchising process. We do not accept such a contention. To do so would enable franchise applicants, fearing a denial of their bid, to delay indefinitely the local franchising process by submitting and resubmitting revisions of their original proposals. In view of these conclusions, we will deny Central's opposition.

In view of the foregoing, the Commission concludes that a grant of the above-captioned application for a certificate of compliance would serve the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" filed January 10, 1973, on behalf of Central Cable System, Inc., IS DISMISSED as moot.

IT IS FURTHER ORDERED, That the "Opposition to Application" filed on December 1, 1972, on behalf of Central Cable System, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Application for Certification" (CAC–1277) filed September 26, 1972, on behalf of Lincoln Cablevision, Inc., IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS, *Secretary.*

FCC 74D-23

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Cease and Desist Order To Be Directed Against DAVID C. MARTINES, 35 MOUNT VERNON AVE., ALEXANDRIA, VA. 22301 Order To Show Cause Why the License for Citizens Radio Station KFK-6095 in the Citizens Radio Service Should Not Be Revoked.	Docket No. 19855

APPEARANCES

David C. Martines, pro se; and *W. Riley Hollingsworth, Esq.* and *Christopher P. De La Fleur, Esq.*, on behalf of the Safety and Special Radio Services Bureau, Federal Communications Commission.

INITIAL DECISION OF CHIEF ADMINISTRATIVE LAW JUDGE ARTHUR A. GLADSTONE

(Issued March 29, 1974; Released April 3, 1974)

PRELIMINARY STATEMENT

1. By Order released October 17, 1973, (SS-277-74), the Commission directed David C. Martines to show cause why the license for Class D radio station KFK-6095 in the Citizens Radio Service should not be revoked. The same Order directed that the licensee show cause why he should not be ordered to cease and desist from further violations of Section 301 of the Communications Act of 1934, as amended, and further violations of the Commission's Rules.[1]

2. The Order to Show Cause alleged that the captioned radio station was operated in wilful and repeated violation of Sections 95.37(c) (over height antenna), 95.41(d)(2) (interstation use of an intrastation frequency) and 95.95(c) (failure to identify properly), and in repeated violation of Sections 95.83(a)(1) (hobby communications), 95.83(a)(13) (technical communications) and 95.91(b) (excessively long communications) of the Commission's Rules.

3. The Order alleged further that the respondent has not only violated numerous Commission Rules, but has stated his intent to continue to ignore the Commission's correspondence, rules and procedures.

4. It was alleged additionally that respondent's conduct, as described in the Order, is contrary to the public interest, convenience and neces-

[1] Issued by the Chief, Safety and Special Radio Services Bureau, pursuant to delegated authority.

sity standards provided in Sections 301 and 307(a) of the Communications Act of 1934, as amended; and that the Commission would be warranted in refusing to grant an application filed by the respondent for a Citizens radio station license if his original application were now before it.

5. It was also alleged that, in view of the respondent's past conduct and stated intention, it is evident that he will continue to operate his radio station in violation of Section 301 of the Communications Act of 1934, as amended, even if his license is revoked.

6. These matters came on for hearing in a consolidated proceeding, held in Washington, D.C., on January 23, 1974, subsequent to a prehearing conference held on December 12, 1973. The record was closed on January 23, 1974. The Bureau has timely filed proposed findings of fact and conclusions of law.[2] Respondent has not made such a filing, nor has he filed a reply thereto.

FINDINGS OF FACT

7. David C. Martines, the licensee of Citizens radio station KFK-6095, resides at 35 Mount Vernon Avenue, Alexandria, Virginia, and that was his address in June and September 1973.

8. Respondent indicated, on his application for a Citizens radio station license, that he had read and understood Part 95 of the Commission's Rules, and he stated at the hearing that he had read them.

9. On June 29 and 30, 1973, Commission engineer Wayne McKee monitored a station in the Citizens Radio Service whose operator was identifying solely as "Coffee-Drinker." Respondent was the operator identifying the station in that manner.

10. An inspection was conducted of respondent's station on July 1, 1973. As a result of the monitoring and inspection, respondent was issued an Official Notice of Violation on July 27, 1973. The notice listed those sections of Part 95 of the Commission's Rules allegedly violated during the operation of respondent's Citizens radio station on June 29 and 30, 1973. Specifically, the violations cited pertained to Sections 95.95(c), 95.41(d)(2), 95.37(c), 95.83(a)(1), 95.83(a)(13) and 95.91(b) of the Commission's Rules. The notice and the attached partial transcript of the monitored communications were prepared by Mr. McKee, the same Commission engineer who had conducted the monitoring of respondent's station. The notice was mailed on July 27, 1973.

11. Respondent admitted that he received the Official Notice of Violation resulting from his transmissions on June 29 and 30, 1973 Further, he admitted that the partial transcript of the intercepted communications is a correct and accurate representation of his transmission. The respondent also admitted that his antenna was beyond the legal height, as alleged.

12. Upon receiving the Official Notice of Violation for his transmissions on June 29 and 30, 1973, respondent sent it to an organization known as the "United CB'ers of America" (hereinafter UCBA).

[2] The Bureau's proposed findings of fact and conclusions of law, being accurate and sound, have been incorporated with some editorial changes.

Although the notice called for a reply within ten days of receipt, respondent did not reply to the notice within that time. When no answer was received to the notice within the prescribed time, the Commission, on August 14, 1973, issued a warning letter to respondent concerning his failure to reply. The letter directed respondent to reply within ten days of its receipt showing: (1) the reply required by the Official Notice of Violation and (2) an explanation of his failure to reply to that notice within the required time. Respondent admitted receiving the warning letter. In reply to the Official Notice of Violation and the warning letter, respondent mailed a letter on the UCBA letterhead. This letter stated that the respondent was a member of UCBA and would "ignore any further letters or notices" from the Commission. He also included a letter which he had written admitting the violations.

13. During the inspection of respondent's station on July 1, 1973, by Commission engineers, he was told that he would be receiving a Notice of Violation for his operating violations on June 29 and 30, 1973.

14. On September 19, 1973, Commission personnel monitored and recorded a station identifying as "Coffee drinker." It was located by radio direction finding techniques at 35 Mount Vernon Avenue, Alexandria, Virginia. The operator of the station identifying as "Coffee drinker" used no call sign; was communicating with units of other radio stations on Channel 21 (21.215 MHz); and failed to observe the required five-minute silent period between contacts. The partial transcript of the communications intercepted on September 19, 1973, also established that the station identifying by the pseudonym "Coffee drinker" transmitted communications relating to use of the station as a hobby or diversion.

15. As a result of the monitoring on September 19, 1973, a second Official Notice of Violation was issued to respondent. It was mailed October 31, 1973, and contained a partial transcript of the intercepted communications. It was transcribed by Charles Magin, the Commission engineer who conducted the direction finding effort of September 19, 1973.

16. Respondent admitted that he received the second Official Notice of Violation. Instead of promptly replying to the notice, respondent mailed it to the UCBA at its headquarters in Detroit, Michigan.

17. A warning letter was mailed to respondent on October 25, 1973, informing him of his failure to respond to the Official Notice of Violation. Respondent admitted that he received the warning letter. In response, respondent sent the Commission another letter. In his letter, respondent again stated that he would ignore any further letters or notices from the Commission. Respondent stated that he read and signed the letter before he mailed it to the Commission. This was his only reply to the second Notice of Violation and follow-up warning letter.

18. As a result of the violations of the Commission's Rules alleged to have been committed in the operation of respondent's radio station on June 29 and 30 and September 19, 1973, the Order to Show Cause which generated this proceeding was issued by the Commission on October 17, 1973.

19. In response to the Commission's Order to Show Cause, respondent requested a hearing and submitted a third UCBA letter, dated October 19, 1973. Respondent signed this letter and stated that he knew that it was the same type of letter that he had twice before sent the Commission. The letter stated that, until such time as certain matters had been decided by the courts, respondent would continue to operate his radio station in violation of the Communications Act of 1934, as amended, and the Commission's Rules.

20. Respondent testified that he "bought" a license from the UCBA. He also testified that, on the dates in question, he was operating his equipment as a unit of the radio station of UCBA, not as a unit of KFK–6095. He claimed that UCBA was responsible for operating violations when he used the call sign KDW–6076 which, purportedly, was assigned to the UCBA station with which he deemed his unit to be affiliated. However, no such call sign, nor any call sign whatsoever, appears in the transcript of the communications on the dates in question, and no such call sign was, indeed, used in such communications.

21. When asked if he was aware that Mr. Bennett,[3] President of UCBA, or Phillip Nolan, as he is sometimes known, was being prosecuted by the government and that the government was making an effort to stop him, respondent stated "Yes, I know he has been in and out of court for the last eight years." Respondent stated further that he hoped the government would stop Mr. Bennett and that, if he got citations, maybe "Phillip Nolan could get in court so he could change a few rules and regulations."

CONCLUSIONS

1. It is uncontroverted that, on June 29 and 30 and September 19, 1973, David C. Martines operated his Citizens radio station in violation of Sections 95.37(c), 95.41(d)(2), 95.83(a)(1), 95.83(a)(13), 95.91(b) and 95.95(c) of the Commission's Rules.

2. The sole remaining question in this proceeding concerns the severity of the sanction to be imposed upon respondent. The findings of fact illuminate the gravity of these violations and the true character of respondent's operation. It is especially significant that, after having had his station inspected by Commission personnel and after having been cited for certain rule violations, respondent again operated his station in contravention of the Commission's Rules. These acts clearly manifest the respondent's callous disregard, not only for the Commission's Rules, but for its personnel and procedures as well.

3. Not only did respondent violate the Rules of the Commission on the second occasion, but each time he chose to reply to Commission correspondence in the same reckless manner and with the same

[3] On all dates covered by the Order to Show Cause, the United CB'ers of America and George Bennett, its founder, also known as "Phillip Nolan," were under indictment by a federal grand jury in Detroit, Michigan, which charged, among other things, distribution of counterfeit radio licenses, impending the lawful regulatory functions of the Federal Communications Commission, mail fraud and conspiracy. On December 20, 1973, the United CB'ers of America and George Bennett were each found guilty on all eleven counts of the indictment. (Official Notice taken.)

absence of concern for the Commission's attempts to regulate the Service. Even in response to the Order to Show Cause, respondent mailed a letter to the Commission stating that, until certain matters were decided in the courts, he would continue to operate his radio station in violation of the Commission's Rules.

4. Inasmuch as respondent was warned, at the time of his station inspection, that he had violated certain rules and, inasmuch as he received two pieces of correspondence from the Commission to that effect, his subsequent violations of the Commission's Rules lead to one of two conclusions. Either respondent was totally unconcerned about violating the Rules of the Commission, or he was playing the odds that he would not be monitored again.

5. Through his repeated violations, and through his replies to the Commission, respondent has demonstrated his propensity to ignore the Commission's Rules and processes. He has manifested a complete lack of concern for the Commission's efforts at regulation of the Citizens Radio Service and has taken a cavalier approach to rule violations in a radio service already heavily congested. The Commission would be stalemated in the performance of its statutory duties if it could not require that its licensees operate radio stations conscientiously and that they reply conscientiously to Commission correspondence. Licensees who have displayed their unwillingness to operate within the rules and regulations must lose their license privilege. The alternative is chaos.

6. Respondent's claim that, at the time of his violations, he was operating as a unit of KDW–6076 is untenable. The subject matter of the conversations is not indicative of communication between units of the same station (a required premise for the alleged propriety of such an operation) and no station identification was given negating any color of legitimacy to this claim. Indeed, respondent's testimony in this area is further evidence of his blatant attempt to circumvent the Commission's Rules.

7. In view of the foregoing, the Commission would be warranted in refusing to grant an application filed by respondent if his original application were now before it.

8. The license of David C. Martines for Citizens radio station KFK–6095 should be revoked. Moreover, to prevent continued operation by respondent in violation of the Communications Act and the Commission's Rules, a Cease and Desist Order should be issued to respondent.

Accordingly, pursuant to Section 312 of the Communications Act of 1934, as amended, and Rule 1.91, IT IS ORDERED that unless an appeal is taken from this Initial Decision to the Commission by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, David C. Martines shall Cease and Desist forthwith from further violations of Sections 301 and 307(a) of the Communications Act, as amended, and further violations of the Commission's Rules as described above.

IT IS FURTHER ORDERED, That the license of David C. Martines for Citizens Radio Service Station KFK–6095 IS REVOKED.

Unless action is taken under Rule 1.276, the effective date of this revocation order is fifty days from the public release of the full text of this Initial Decision. The Secretary is directed to serve a copy of this Initial Decision on respondent David C. Martines at 35 Mount Vernon Ave., Alexandria, Virginia 22301.

FEDERAL COMMUNICATIONS COMMISSION,
ARTHUR A. GLADSTONE,
Chief Administrative Law Judge.

FCC 74-524

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of MICRO-CABLE COMMUNICATIONS CORP., HERMISTON, OREG. For Certificate of Compliance	CAC-744 ORO44

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: CHAIRMAN WILEY CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. Apple Valley Broadcasting, Inc., licensee of Television Broadcast Station KVEW, Kennewick, Washington, has submitted a "Petition for Partial Reconsideration" directed against the certificate of compliance granted in *Micro-Cable Communications Corp.*, FCC 74-61, 45 FCC 2d 154 (1974). The petition is opposed by Micro-Cable Communications Corporation.

2. In its petition, KVEW reiterates its arguments, fully discussed in the above-referenced decision, that permitting Micro-Cable to carry both the non-network programming of Station CHEK-TV and the quantity of Station KPTV (Ind., Portland, Oregon) programming already being provided amounts to granting a cable system in a smaller market two independent signals, in contravention of Section 76.59 of the Rules. It states that "there is *no condition whatsoever* imposed on the system that it not increase its KPTV programming" on the certificate of compliance issued to Micro-Cable, and that as a "struggling, small-market UHF" satellite station, it is in need of protection. It asks that Micro-Cable be precluded from carrying any of the programming of Station KPTV.

3. KVEW's arguments must be rejected. In permitting Micro-Cable to carry both the non-network programming of Station CHEK-TV,[1] and the small amount of independent programming already being provided, we are enabling the residents of Hermiston to be served with the variety of programming contemplated by the "one independent" rule. KVEW has failed to submit data showing the likelihood of financial injury as a direct consequence of such carriage, and its bare allegation of financial impact falls short of the specificity of fact, showing injury to the public, sufficient to meet the substantial burden of proof imposed on one challenging carriage we find consistent with the Rules.

[1] Station CHEK-TV was found not to qualify as an independent in *King Videocable Co.*, FCC 73-146, 39 FCC 2d 600 (1973).

See See-Mor Cable TV of Sikeston, Inc., FCC 73–796, 42 FCC 2d 261 (1973); *Fort Smith TV Cable Co.*, FCC 73–151, 39 FCC 2d 573 (1973); *Spectrum Cable Systems, Inc.*, FCC 73–257, 40 FCC 2d 1019, *recons. denied*, FCC 73–1342, 44 FCC 2d 867 (1973).[2] As stated in our original opinion, we believe the degree of program exclusivity to be afforded, coupled with the small size of Micro-Cable's system, adequately protects KVEW against any audience fragmentation that might result from the part-time carriage of CHEK–TV. Finally, turning to the contention that the certificate of compliance is not properly conditioned, we note that the certificate states, in relevant part:

CONDITION. Grant of this certificate is conditioned on Micro-Cable carrying only the non-network programming of CHEK–TV, and not providing any amount of KPTV programming in excess of that provided on October 2, 1972.

In view of the foregoing, the Commission finds that reconsideration of its action in *Micro-Cable Communications Corp.*, FCC 74–61, 45 FCC 2d 154 (1974), would not be in the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Partial Reconsideration" filed March 1, 1974, by Apple Valley Broadcasting, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] Appeal pending *sub nom. Springfield Television Broadcasting Corp.* v. *F.C.C.*, Case Nos. 74–1214 and 1215 (D.C. Circuit), and *The WHYN Stations Corp.* v. *F.C.C.*, Case Nos. 74–1216 and 1217 (D.C. Circuit).

FCC 74–520

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
MOBILE TV CABLE CO., INC., D.B.A. TELEPROMPTER OF MOBILE, BAYOU LA BATRE, ALA.	CAC–1099 AL103
MOBILE TV CABLE CO., INC., D.B.A. TELEPROMPTER OF MOBILE, FAIRHOPE, ALA.	CAC–1100 AL104
MOBILE TV CABLE CO., INC., D.B.A. TELEPROMPTER OF MOBILE, DAPHNE, ALA.	CAC–1101 AL105
MOBILE TV CABLE CO., INC., D.B.A. TELEPROMPTER OF MOBILE, BALDWIN COUNTY, ALA.	CAC–1102 AL106
MOBILE TV CABLE CO., INC., D.B.A. TELEPROMPTER OF MOBILE, LOXLEY, ALA.	CAC–1103 AL107
MOBILE TV CABLE CO., INC., D.B.A. TELEPROMPTER OF MOBILE BAY MINETTE, ALA.	CAC–1104 AL108
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On September 1, 1972, Mobile TV Cable Company, Inc., d/b/a TelePrompTer of Mobile, filed applications for certificates of compliance (CAC–1099, 1100, 1101, 1102, 1103, and 1104) to commence cable television service at the above-captioned communities, all of which are located within the Mobile, Alabama-Pensacola, Florida major television market (#59).[1] The applicant proposes carriage of the following television broadcast signals:

WALA–TV (NBC, channel 10), Mobile, Alabama
WKRG–TV (CBS, channel 5), Mobile, Alabama
WEIQ (educational, channel 42), Mobile, Alabama
WEAR–TV (ABC, channel 3), Pensacola, Florida
WLOX–TV[2] (ABC, channel 13), Biloxi, Mississippi
WSRE (educational, channel 23), Pensacola, Florida
WYES–TV (educational, channel 12), New Orleans, La.
WMAH (educational, channel 19), Biloxi, Mississippi
WTCG (Independent, channel 17), Atlanta, Georgia
WGNO–TV (Independent, channel 26), New Orleans, La.

[1] The populations of the communities and dates of the franchise grants are as follows: Bayou La Batre, 2,664, Jan/70; Fairhope, 5,720, Sept/69; Daphne, 2,382, Sept/69; Baldwin County, 59,382; Loxley 859 Nov/69; Bay Minette 6,727, Jan/70. These systems will operate with at least 20 channel capacity.

[2] TelePrompTer seeks certification for the carriage of WLOX–TV only for the system at Bayou La Batre.

Carriage of these signals is consistent with Sections 76.63 and 76.65 of the Commission's Rules. All of the systems, with the exception of the one located at Bayou La Batre, will be designed to operate from a common headend, located in Baldwin County. All of the applications are unopposed.

2. TelePrompTer requests a waiver of Section 76.251(a)(4)–(7) of our Rules to allow it to provide a common set of access channels for the five systems which will operate from the Baldwin County headend. In support of its request TelePrompTer notes the comparatively small population of the communities. Additionally, TelePrompTer points to a political, social, and economic community of interest between the communities and states that should the need arise, additional channels will be provided. Finally, TelePrompTer requests a complete waiver of the access channel provisions of Section 76.251 of the Rules for the Bayou La Batre system. In support of this request, TelePrompTer states that the community has a population of only 2,444 (788 households) and that the maximum revenue that could be generated, less than $4,000 per month, is insufficient to allow TelePrompTer to supply the necessary access services.

3. We acknowledge in Paragraphs 147 and 148 of the *Cable Television Report and Order*, 36 FCC 2d 143 (1972), that there would be situations in which our access requirements would impose an "undue burden", and a waiver would be appropriate. With respect to TelePrompTer's proposal to share access channels among the systems operating from the headend at Baldwin County, we are satisfied that, considering the small size of four of the five communities involved, and the showings made, a partial waiver of Section 76.251 to allow TelePrompTer to share at this time, one set of access channels among those systems is justified and within the scope of prior Commission precedent (See *Century Cable Communications, Inc.*, 44 FCC 2d 1023 (1974)). However, should sufficient demand develop, we expect TelePrompTer to make additional channels available. Our certification of these operations in accordance with the note to Section 76.13(a)(4) of the Rules will extend only until March 31, 1977. We shall, at the time TelePrompTer applies for recertification, expect it to demonstrate the extent to which its proposal has been successful and has operated in the public interest.

4. TelePrompTer's request for a complete waiver of the access channel provisions of Section 76.251(a)(4)–(a)(11) in Bayou La Batre must be rejected. In paragraph 148 of the *Cable Television Report and Order*, *supra*, we stated: "If . . . (the access) requirements should impose an undue burden on some isolated system, that is a matter to be dealt with in a waiver request, with an appropriate detailed showing." It was further suggested in paragraph 147 of the *Cable Television Report and Order*, *supra*, that shared access was an approach that the Commission would consider for small communities.[3] Bayou La Batre is located approximately 20 miles southwest of Mobile, Alabama, in south Mobile County, on the Gulf of Mexico. Although there would

[3] In paragraph 147 we stated in part: "To the extent that the access requirements pose problems for systems operating in small communities in major markets, such systems are free to meet their obligations through joint building and related programs with cable operators in the larger core areas."

appear to be at present no cable systems operating in the immediate vicinity of Bayou La Batre, TelePrompTer has received certification for a system which will operate in both southwest and southeast Mobile County, from a headend located at Mobile, Alabama. (See *Mobile TV Cable Company, Inc.*, FCC 74–415). TelePrompTer's initial application for Bayou La Batre proposed service to the Bayou La Batre community from a headend to be located at Mobile, Alabama. TelePrompTer subsequently amended its application stating: "For technical and economic reasons it is not feasible to incorporate the Bayou La Batre system as part of TPT's overall Mobile conglomerate system." This unsupported statement is insufficient to constitute an adequate showing with respect to the financial feasibility of sharing access facilities and channels with either of its proposed systems in Mobile or Mobile County, Alabama.[4] Consequently, TelePrompTer has not demonstrated that it is faced with an "undue burden" sufficient in magnitude to merit a waiver of the provisions of Section 76.251(a)(4)–(a)(11) of the Commission's Rules, and its application for Bayou La Batre will be denied.

5. The franchises awarded to TelePrompTer by Fairhope on September 8, 1969, Daphne on September 15, 1969, Loxley on November 6, 1969, and by Bay Minette on January 6, 1970, contain no provisions that they were awarded after a full public proceeding. In addition, there is no requirement that the franchisees will seek to have any amendments of Section 76.31 of the Rules incorporated into the franchise within one year of Commission adoption or that significant construction will be commenced within one year of Commission certification. However, the franchises do require that TelePrompTer maintain a local office to handle complaints. All the franchises contain a rate schedule and provide that any change in rates is subject to city council authority. Since the franchises were granted prior to March 31, 1972, only substantial consistency with the franchise provisions of Section 76.31 of the Rules need be demonstrated at this time, according to the note to Section 76.13(a)(4). We find the deviations described above to be relatively minor, and therefore, find substantial consistency sufficient to grant these applications until March 31, 1977.

6. TelePrompTer alleges that a franchise is not necessary for cable television operation in Baldwin County. In support of its contention TelePrompTer provides a letter signed by the Chairman of the Baldwin County Commission which supports TelePrompTer's proposal to provide cable television service within the area but reserves to the county the right to rule upon any future request for a right of way. This letter indicates that Baldwin County's jurisdiction with respect to cable television extends only to matters related to rights of way. In lieu of a franchise TelePrompTer states that "Mobile TV Cable will comply with all the applicable provisions of Rule 76.31 as elaborated in Paragraphs 5 and 6 of the Saraland application" (CAC–1098). These paragraphs refer only to the procedures that preceded the granting of a franchise to TelePrompTer in Saraland and the pledges

[4] We note that although TelePrompTer proposes to serve Mobile County from a headend located in the City of Mobile, it plans to have an access studio at an LDS receiving site located in the southwest portion of Mobile County, presumably close to Bayou La Batre.

that TelePrompTer made to the Saraland franchising authority.[5] In paragraph 116 of the *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972), we stated that we would treat such situations on a case-by-case basis. TelePrompTer's assurances, although sufficient to hold the Saraland franchise in substantial compliance, do not constitute an acceptable alternate proposal for assuring that the substance of our rules will be complied with in Baldwin County.[6] Our denial of TelePrompTer's application is without prejudice to the refiling of a proposal in lieu of franchise consistent with the paragraph 116 of the *Reconsideration*, *supra*, and Commission precedent. (See footnote 6.)

In view of the foregoing, the Commission finds that a grant of the subject applications, with the exception of the applications filed for Bayou La Batre and Baldwin County, would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications filed by TelePrompTer of Mobile for Fairhope (CAC–1100), Daphne (CAC–1101), Loxley (CAC–1103), and Bay Minette (CAC–1104), Alabama, ARE GRANTED and appropriate certificates of compliance will be issued.

IT IS FURTHER ORDERED, That the above-captioned applications filed by TelePrompTer of Mobile for Bayou La Batre (CAC–1100) and Baldwin County (CAC–1102), Alabama, ARE DENIED, subject to further proceedings consistent with paragraphs 4 and 6 above.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[5] Paragraphs 5 and 6 of the Saraland application state: (a) that the applicants qualifications and proposed rates were considered by the Saraland City Council; (b) that a 5% gross subscriber revenue figure shall be paid to the city of Saraland; and (c) that no increase in subscriber rates shall be made except by "the franchising authority." Finally TelePrompTer states "the systems performance under the franchise, technical and otherwise, will be subject to the continuing review of the franchising body and, as indicated in the franchise, adequate provision has been made for the prompt satisfaction of subscriber complaints.

[6] For contrast see *Armstrong Utilities, Inc.*, 40 FCC 2d 897 (1973); *Mahoning Valley Cablevision, Inc.*, 39 FCC 2d 939 (1973); *Ultracom of Liberty County, Inc.*, 44 FCC 2d 643 (1973); *Coastal Cable, Inc.*, 41 FCC 2d 857 (1973).

FCC 74-540

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTIONS 73.35, 73.240, AND 73.636 OF THE COMMISSION'S RULES RELATING TO MULTIPLE OWNERSHIP OF STANDARD, FM AND TELEVISION BROADCAST STATIONS	Docket No. 18110

ORDER CHANGING DATES OF ORAL ARGUMENT

(Adopted May 23, 1974; Released May 24, 1974)

BY THE COMMISSION:

1. In a Memorandum Opinion and Order, adopted February 28, 1974 (FCC 74-222, 39 Fed. Reg. 9551), the Commission announced that oral argument in this proceeding would take place on June 18, 19 and, if necessary, June 20, 1974. Written requests to participate in the oral argument were to be filed not later than May 1, 1974. In addition, interested parties were invited to file elaborating or up-dating written materials by the same date, if they wished to do so. Subsequently, at the request of several petitioners, the date for filing written submissions and notices of appearance was extended from May 1 to May 15, 1974 (39 Fed. Reg. 15509).

2. Recently the Communications Subcommittee of the U.S. Senate Commerce Committee announced that it would hold hearings on June 18, 19, and 20, 1974, on proposed broadcast license renewal legislation which is of great importance both to the Commission and the broadcast industry. It may reasonably be expected that the Commission will be represented among those testifying at the Subcommittee hearings. Moreover, some of the parties wishing to partake in the Commission hearings in the present proceeding may wish to participate in the renewal hearing. In view of this conflict, it appears prudent to postpone the oral argument in this proceeding to a later time, and we are therefore changing the dates from those mentioned above to July 24, 25 and (if necessary) 26, 1974.

3. In view of the delay entailed by this change of dates, and since we wish to have as complete a record as possible on which to base our decisions, we are affording interested parties an opportunity to reply to the written up-dating and supplemental comments that were filed in response to the above-mentioned order scheduling oral argument. Parties may file such reply comments not later than June 12, 1974. The usual requirement of an original and fourteen copies shall apply to such filings.

4. Consistent with the foregoing, IT IS ORDERED, That the oral argument scheduled for June 18, 19 and, if necessary, June 20, 1974,

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IS CANCELLED, and that oral argument in this proceeding WILL BE HELD July 24, 25 and, if necessary, July 26, 1974. IT IS FURTHER ORDERED, That reply comments to the up-dating and supplemental comments filed in this proceeding may be filed not later than June 12, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-501

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
960 RADIO, INC.
Concerning a Construction Permit To Increase the Hours of Operation of Station KLAD, Klamath Falls, Oreg.

MAY 14, 1974.

Mr. CYRUS L. SMITH,
Radio Station KLAD,
960 Radio, Inc.,
P.O. Box 960,
Old Midland Road,
Klamath Falls, Oreg. 97601

DEAR MR. SMITH: This is in reference to your application, re-tendered for filing on February 25, 1974, for a construction permit to increase the hours of operation of KLAD. By letter of January 11, 1974, the Chief, Broadcast Bureau, pursuant to section 0.281, returned your application because it did not comply with either section 73.37 (e) (2) (ii) or (iii) of our rules.

The re-tendered application contains an additional engineering exhibit which purports to establish compliance with section 73.37(e) (2) (ii). That section requires that at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed operation must not presently receive such service from an authorized standard broadcast station or service from an authorized FM broadcast station with a signal strength of 1 mV/m or greater. The method described in section 73.313(c) of our rules was used in determining the extent of the 1 mV/m contour of KAGM(FM), Klamath Falls, Oregon, prior to returning your application in January. The KAGM 1 mV/m contour, when computed pursuant to section 73.313(c), encompasses the entire proposed service area, thus rendering your application in violation of section 73.37 (e) (2) (ii). Your consulting engineer recognizes this, but submits that it is not proper to use the section 73.313(c) method because of the surrounding mountainous terrain. The engineering exhibit points out that Klamath Falls is located in a valley surrounded by high mountains, with some high peaks occurring less than one mile from the KAGM antenna. The engineering report notes that propagation of signals at frequencies in the FM broadcast band is essentially line-of-sight. Thus, when the mountains are taken into account, it is contended that the extent of the KAGM 1 mV/m contour is substantially less than predicted by section 73.313(c) because the signal would stop at

the mountains; therefore, the proposal would comply with section 73.37(e)(2)(ii).

Section 73.313(e) of our rules makes provision for a supplemental showing when terrain features are such that the normal prediction method may indicate contour distances that are different from what may be expected in actual practice. Your supplemental showing pursuant to this section is intended to depict more accurately the extent of the 1 mV/m contour of KAGM(FM) and to establish that your proposal does, in fact, comply with section 73.37(e)(2)(ii). However, your method assumes that the signal stops when it hits an obstruction. But that is not true. One exhibit, for example, shows that there is a line-of-sight obstruction on 269 degrees true located 0.8 mile from the antenna site and less than 50 feet above the radiation center. But, contrary to what is indicated in the engineering exhibit, we cannot agree that the signal drops below 1 mV/m beyond 0.8 mile in this direction. For the field strength will be several hundred mV/m on the antenna side of this obstruction, and probably substantially greater than 1 mV/m in many places on the other side. Moreover, in addition to the signal going over the tops of the obstructions, the signal may be propagated between the hills and mountains and arrive at areas behind the obstructions from several different directions. Accordingly, we cannot conclude that your supplemental showing is adequate to define reasonably the extent of the KAGM(FM) 1 mV/m contour. Thus, we have no choice but to rely on the F(50,50) chart and the method set forth in section 73.313(c).

Consequently, we find that your proposal does not comply with section 73.37(e)(2)(ii) because the KAGM 1 mV/m contour determined pursuant to section 73.313(c) envelops the proposed service area. We also find, as was noted in the January 11, 1974, letter returning your application, that your proposal does not comply with the alternative requirements of section 73.37(e)(2)(iii). In addition, although you did not request a waiver of section 73.37(e)(2), we have concluded, after considering the information before us, that a waiver is not warranted. Since you have not submitted sufficient reasons, if true, to justify waiver of section 73.37(e)(2), a hearing is not required. *United States* v. *Storer Broadcasting Company*, 351 U.S. 192 (1956). Accordingly, the application is unacceptable for filing and is returned herewith, except one copy which is being retained for reference.

Commissioner Quello did not participate.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

FCC 74-507

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
NORTH TEXAS BROADCASTING CORP.
Concerning Assignment of License of Station WBAP-TV, Fort Worth, Tex.

MAY 13, 1974.

NORTH TEXAS BROADCASTING CORP.,
c/o LIN Broadcasting Corp.,
1370 Avenue of the Americas,
New York, N.Y. 10019

GENTLEMEN: This refers to your application for assignment of the license of Station WBAP-TV, Fort Worth, Texas, from Carter Publications, Inc. to North Texas Broadcasting Corporation, a wholly owned subsidiary of LIN Broadcasting Corporation (BALCT-510).

Section 310(a) of the Communications Act of 1934, as amended, provides in pertinent part that a station license:

> . . . shall not be granted to or held by . . . any corporation . . . of which more than one-fourth of the capital stock is owned of record or voted . . . by aliens . . . if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

You report that all officers, directors of 1%-or-greater individual shareholders of North Texas and LIN are U.S. citizens. You further report: "As of April 17, 1973 (the date on which the corporation's stock lists were closed for the 1973 annual meeting), LIN's records revealed that 37 holders of its stock of record were aliens. These 37 held 9,419 shares of LIN Broadcasting stock as of that date. As of the same date, there were 3,266 holders of LIN Broadcasting stock, and LIN's shares outstanding totaled 2,296,197. Alien holdings of record thus totalled approximately one-third of one percent of LIN's outstanding shares."

We note that several institutional investors and brokerage firms are holders of record of large blocks of LIN stock and your citizenship showing makes no reference as to who controls the right to vote this stock. It is therefore possible that aliens do vote 25% of LIN's stock and the Commission is of the view that your showing is inadequate to demonstrate that not more than one-fourth of LIN's stock is voted by aliens.

However, it is noted that LIN is an existing licensee of the Commission and has been such for many years. In these circumstances we have concluded that the public interest, convenience and necessity would be served by a grant of this application, subject to the filing of an appropriate showing that ownership of the LIN stock complies with Section 310(a) of the Communications Act within 120 days from the date of this letter. This action is without prejudice to any action the

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Commission may take as a result of such further citizenship showing.

The FCC Form 323 ownership reports for LIN Broadcasting Corporation disclose that Bankers Trust through its nominee, Pitt & Co., holds of record 135,000 shares or 5.879% of the outstanding stock of LIN Broadcasting Corporation. In the last complete ownership report for LIN, which was filed on March 12, 1973 in connection with the application for renewal of license of Station KAAY(AM) Little Rock, Arkansas, it was reported, with respect to the 105,300 shares that Bankers Trust then held, as follows:

> Bankers Trust has sole or joint voting power over 66,300 shares and holds, on behalf of others, additional shares through nominees, including Pitt & Co. It reports no knowledge of a holder among these nominees representing as much as 1% of LIN stock.

From the above it appears that Bankers Trust is not providing LIN Broadcasting with the total number of shares of LIN stock which it holds or the identity of the persons or entities which have voting rights or co-voting rights to LIN's stock. Such information must be obtained by LIN from Bankers Trust in order for LIN to be able to fulfill its obligation to report to the Commission the persons holding 1% or more of its outstanding stock, as required by Section 1.615 of the Commission's Rules. Accordingly, grant of your application is further conditioned upon the filing within 30 days from the date of this letter of a statement regarding the voting rights to the LIN Broadcasting stock held of record by the Bankers Trust Company and a listing of any additional 1% or more holders of your stock which may become apparent from the information furnished by the bank. Our grant of your application is also without prejudice to any action the Commission may wish to take as a result of your filing of this additional ownership information. Commissioners Wiley, Chairman; and Hooks concurring in the result; Commissioner Quello not participating.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

FCC 74-499

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re OHIO VALLEY CABLE CORP., SISTERSVILLE, ST. MARYS, WILLIAMSTOWN, W. VA., AND MARIETTA, OHIO Request for Special Relief	CSR-437, 438, 439, 441 WV168, WV017 WV018 OH093

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 23, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On July 23, 1973, Ohio Valley Cable Corporation, operator of cable television systems at Sistersville, St. Marys, and Williamstown, West Virginia, as well as Marietta, Ohio, filed requests for waiver (CSR-437, 438, 439, 441), of Sections 76.91(a) and 76.93(a) of the Commission's Rules,[1] seeking authorization to deny exclusivity protection to Television Station WDTV, Weston, West Virginia. On November 15, 1973, Withers Broadcasting Company of West Virginia, licensee of Television Station WDTV, Weston, West Virginia, filed an "Opposition to Petition for Waiver and Request for Consolidation." On December 6, 1973, Ohio Valley filed its "Response to Opposition to Petition for Waiver and Request for Consolidation."

2. Sistersville, St. Marys, Williamstown, and Marietta are located within the Parkersburg, West Virginia smaller television market. Ohio Valley operates twelve-channel cable television systems in the four above-captioned communities. Its Sistersville system carries the following signals:

KDKA-TV (CBS, channel 2), Pittsburgh, Pennsylvania
WTAE-TV (ABC, channel 4), Pittsburgh, Pennsylvania
WDTV (CBS, channel 5), Weston, West Virginia
WTRF-TV (NBC, channel 7), Wheeling, West Virginia
WWVU (educational, channel 24), Morgantown, West Virginia
WSTV-TV (CBS/ABC, channel 9), Steubenville, Ohio

[1] Section 76.91(a) provides: "(a) Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95."

Section 76.93(a) provides: "(a) Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday-Saturday) during which exclusivity is sought."

WHC–TV (NBC, channel 11), Pittsburgh, Pennsylvania
WBOY–TV (NBC, channel 12), Clarksburg, West Virginia
WQED (educational, channel 13), Pittsburgh, Pennsylvania

Its St. Marys system carries the following signals:

WSAZ–TV (NBC, channel 3), Huntington, West Virginia
WOUB–TV (educational, channel 20), Athens, Ohio
WDTV (CBS, channel 5), Weston, West Virginia
WTRF–TV (NBC, channel 29), Wheeling, West Virginia
WCHS–TV (CBS, channel 8), Charleston, West Virginia
WSTV–TV (CBS/ABC, channel 9), Steubenville, Ohio
WWVU (educational, channel 24), Morgantown, West Virginia
WBOY–TV (NBC, channel 12), Clarksburg, West Virginia
WHTN–TV (ABC, channel 13), Huntington, West Virginia

Its Williamstown, West Virginia, and Marietta, Ohio systems carry the following signals:

WSAZ–TV (NBC, channel 3), Huntington, West Virginia
WTAP–TV (NBC, channel 15), Parkersburg, West Virginia
WDTV (CBS, channel 5), Weston, West Virginia
WTVN–TV (ABC, channel 6), Columbus, Ohio
WTRF–TV (NBC, channel 29), Wheeling, West Virginia
WCHS–TV (CBS, channel 8), Charleston, West Virginia
WBNS–TV (CBS, channel 10), Columbus, Ohio
WOUB–TV (educational, channel 20), Athens, Ohio
WBOY–TV (NBC, channel 12), Clarksburg, West Virginia
WHTN–TV (ABC, channel 13), Huntington, West Virginia

WDTV is a CBS affiliate and places a predicted Grade B contour over all four communities which Ohio Valley serves. Ohio Valley's Sistersville system carries WSTV–TV, a CBS affiliate which also places a predicted Grade B contour over Sistersville, and KDKA–TV, a CBS affiliate which does not. Its St. Marys system carries WCHS–TV and WSTV–TV, both of which are CBS affiliates and which fail to place a predicted Grade B contour over the community. And its Marietta and Williamstown systems carry WCHS–TV and WBNS–TV, both of which are CBS affiliates and both of which fail to place a predicted Grade B contour over the communities. Withers Broadcasting is seeking exclusivity with respect to all other CBS affiliates with lower priorities.

3. Ohio Valley argues that it should not be required to accord WDTV exclusivity, on the grounds that WDTV transmits a low-quality signal, that WBNS–TV's programming is of greater interest to Ohio subscribers, that WDTV has no financial need for exclusivity protection, and that subscribers would prefer to view CBS programming on multiple channels. We reject its arguments for the following reasons.

4. Ohio Valley offers no documentation in support of its contentions. Accordingly, it is impossible to give them any weight. Its argument that WDTV's signal is so poor that it cannot be delivered properly to its subscribers is very tenuous, since several other CBS affiliates which Ohio Valley carries are distant signals which fail to place even a predicted Grade B contour over its communities. Similarly, Ohio Valley has failed to show that exclusivity protection is not necessary for

WDTV or is in any way disruptive to its subscribers' established viewing habits. As we recently noted in *Tygart Valley Cable Corporation*, FCC 73–1178, 43 FCC 2d 966, such unsubstantiated arguments cannot justify a waiver of our rules.

In view of the foregoing, the Commission finds that a grant of the requested waiver of Sections 76.91 and 76.93 of the Commission's Rules would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the petitions for waiver (CSR–437, 438, 439, 441) filed July 23, 1973, by Ohio Valley Cable Corporation ARE DENIED.

IT IS FURTHER ORDERED, That Ohio Valley Cable Corporation IS DIRECTED to comply with the requirements of Sections 76.91 and 76.93 of the Commission's Rules on its cable television systems at Sistersville, St. Marys, and Williamstown, West Virginia, and Marietta, Ohio, within thirty (30) days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74R-189

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of RADIO RIDGEFIELD, INC., RIDGEFIELD, CONN. For Construction Permit	Docket No. 19687 File No. BP-18494

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 24, 1974)

BY THE REVIEW BOARD:

1. This proceeding involves the application of Radio Ridgefield, Inc. (Radio Ridgefield) for authorization to construct a standard broadcast station at Ridgefield, Connecticut. By Memorandum Opinion and Order, 41 FCC 2d 982, 27 RR 2d 1637 (1973), the Review Board denied a request by Westport Broadcasting Company (Westport)[1] for, *inter alia*, site availability and suitability issues against Radio Ridgefield. Now before the Review Board is a "second motion to enlarge issues", filed January 30, 1974, by Westport, which again requests a site availability/suitability issue, as well as Sections 1.514 and/or 1.65 issues and a misrepresentation issue against Radio Ridgefield.[2]

2. Westport's request for the above issues is based on a letter from Radio Ridgefield to the Administrative Law Judge in this proceeding dated January 28, 1974, which states that while Radio Ridgefield "remains reasonably assured of its transmitter site . . . recent developments" have caused Radio Ridgefield's president and principal stockholder (Bartholomew T. Salerno) "to question whether Radio Ridgefield could, if granted a construction permit, now expect to obtain the height limitation variance necessary to construction of its proposed towers." Petitioner notes that these "developments" consist of recent statements made by a professional land use consulting group hired by the town, a denial of zoning approval for enlargement of an existing center and growing controversy over development of a new shopping

[1] By Order, FCC 73M-469, released April 17, 1973, Westport and Berkshire Broadcasting Corporation (Berkshire) were granted leave to intervene.

[2] Also before the Board are the following related pleadings: (a) opposition, filed February 13, 1974, by the Broadcast Bureau; (b) opposition, filed February 22, 1974, by Radio Ridgefield; (c) erratum to (b), filed February 26, 1974, by Radio Ridgefield; (d) reply, filed March 6, 1974, by Berkshire Broadcasting Corporation; (e) reply, filed March 6, 1974, by Westport; (f) supplement to second motion to enlarge issues, filed March 20, 1974, by Westport; (g) comments on (f), filed April 8, 1974, by the Broadcast Bureau; (h) response to (f), filed April 8, 1974, by Radio Ridgefield; (i) petition for leave to supplement (h) and supplement, filed April 11, 1974, by Radio Ridgefield; and (j) reply to response to supplement, filed April 25, 1974, by Westport. By Order, FCC 74R-122, released April 2, 1974, the Board granted Radio Ridgefield permission to file (h), *supra*. The Board hereby also grants (i), Radio Ridgefield's petition for leave to supplement (h) and supplement, filed April 11, 1974.

center in the area where Radio Ridgefield's proposed site is located.[3] Also attached to this letter, notes Westport, are letters from the present and a previous town attorney, substantiating Radio Ridgefield's position that zoning approval at the present site would be more difficult to obtain than at the suggested new site. In Westport's opinion, this new information clearly indicates that Radio Ridgefield does not have reasonable assurance of the availability of its transmitter site. Moreover, argues Westport, since one of the applicant's submissions states that zoning problems have existed in the area of its proposed site for over a year and Radio Ridgefield has not explained why disclosure of this information was not made earlier, a Rule 1.514 and/or 1.65 issue is required. Finally, Westport contends that good cause for the untimeliness of its petition exists since the information relied upon was not brought to light until Radio Ridgefield's letter of January 28, 1974.

3. Both Radio Ridgefield and the Broadcast Bureau oppose Westport's second motion to enlarge issues, primarily on the basis of procedural deficiencies. Both argue that Westport's second motion is grossly untimely and no good cause has been shown. Moreover, argues the Bureau, Westport has not met the test of *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966), because petitioner has not demonstrated that the likelihood of proving the allegations is so substantial as to outweigh the public interest benefits inherent in the orderly administration of the Commission's business. The Bureau also charges that Westport's motion does not comport with Section 1.229(c) of the Commission's Rules because it does not contain specific or properly supported allegations of fact. In this connection, the Bureau maintains that petitioner's allegations do not constitute a sufficient basis upon which to conclude that Radio Ridgefield does not have reasonable assurance of the availability of its proposed site; thus, neither the fact that nearby land was rejected by the zoning council for use as a shopping center nor the predictions of local counsel can be regarded as adequate indication of unavailability. With respect to Radio Ridgefield's alleged noncompliance with Rule 1.65, both Radio Ridgefield and the Bureau contend that Westport has not shown that Radio Ridgefield was dilatory. In support of this contention, Radio Ridgefield submits copies of recent newspaper clippings from local papers which, it argues, demonstrate the recent increase in opposition to various zoning requests. These clippings belie Westport's claim that the information upon which its petition is based could not have come to light prior to Radio Ridgefield's letter to the Administrative Law Judge and, therefore, by Westport's own admission Radio Ridgefield has not violated Rule 1.65 and/or Rule 1.514, Radio Ridgefield concludes.

4. Subsequently, in a "supplement" filed March 20, 1974, Westport notes that on March 7, 1974, during cross-examination of Salerno concerning the details of Radio Ridgefield's lease of its transmitter site,[4]

[3] The letter also states that "it seems possible that in the near future it may be necessary for Radio Ridgefield to seek an engineering amendment to its application specifying an alternate site . . . which is the site previously specified in an amendment offered for the purpose of meeting the Suburban Community issue. . . ." (This amendment was rejected by Memorandum Opinion and Order, FCC 73M–1027, released September 11, 1973.)

[4] This inquiry was made pursuant to a financial issue specified against Radio Ridgefield in the designation Order.

Salerno testified that, pursuant to a "verbal agreement" made "several years ago" with a state "Purchasing Officer" named "Mr. Burke", the land for the transmitter site was to be made available to it for either one dollar per month or per year.[5] However, notes Westport, after it searched the relevant State offices and found no record of a "Mr. Burke", Salerno then testified that the verbal agreement might have been made with a "Mr. Burak". Westport submits an affidavit from Burak, who retired in 1972, in which he avers that he had met with Salerno and discussed "the possible acquisition of some swampland but we never discussed the possible lease to him of State land for a radio transmitter site." Burak also avers that he was never authorized to, nor would he, make any commitments about leasing State land to a private party for a nominal sum.

5. In response to Westport's "supplement", Radio Ridgefield first argues that the Salerno testimony cannot be relied upon by Westport as a basis for its request since at the urging of the Presiding Judge Westport's counsel had expressly represented that he would not use information elicited during this portion of the hearing to raise further matters concerning site availability. Accordingly, the applicant contends that the Judge subsequently erred in permitting Westport to pursue the line of questioning which had been formerly disallowed. In reference to the affidavit of Burak, Radio Ridgefield notes that Burak does admit meeting with Salerno. And, in any event, continues Radio Ridgefield, recent indication of the availability of its transmitter site is demonstrated by a letter dated March 25, 1974, addressed to Salerno, from the present "assistant director" of the state agency responsible for the land purchase in question, George C. Hancock. The applicant recites that this letter states that ". . . negotiations for your [Salerno's] lands will go forward . . ." and "the door certainly has not been shut on making available the transmitter site in exchange for lands or flood rights owned by you [Salerno]. . . .": the letter also indicates that the State's negotiations would be with the Town of Ridgefield and that, in the writer's opinion, rental would be "nominal"; Radio Ridgefield also attaches a "resolution" adopted by the Board of Selectmen of the Town of Ridgefield which states that the Town will, contingent upon enabling state action, lease the above-mentioned "wetlands" to Radio Ridgefield at a nominal rate, not to exceed $100 per month. In comments filed in response to Westport's supplement, the Bureau supports enlargement unless Radio Ridgefield explains the conflict between Burak's affidavit and Salerno's testimony, and sets forth the means by which the applicant intends to obtain permission for use of the site.

6. In reply to Radio Ridgefield's opposition, Westport contends that Radio Ridgefield has still not submitted any information which would indicate that it has reasonable assurance of the availability of its

[5] According to Salerno, although a formal agreement was "never quite worked out", by "verbal agreement" made "somewhere around 1970", the State of Connecticut intends to purchase certain land owned by Salerno and, as a part of the purchase agreement, Salerno would be permitted to lease land for a transmitter site in exchange for flood rights to other adjacent land owned by Salerno. (Tr. 935–950.)

proposed site.[6] Thus, Westport argues, neither of Radio Ridgefield's "recent indications" of assurance, either from the state or local authorities, substantiate its claim that there is any agreement which would insure that the applicant's proposed site will actually be available. As an initial matter, Westport notes that the applicant's proposed site has not been described with any degree of specificity by the allegedly contracting parties and, thus, it cannot be assumed that any specific leasehold has been actually contemplated. With respect to any enabling action on the part of the State, Westport alleges that there has been no discussion between the State and the Town concerning a lease of land to Radio Ridgefield. In support of this contention, Westport submits a letter from the State agent Hancock stating that he has been asked to "clarify" his letter to Salerno, but that he has "never had any discussion of any kind with any representative of the Town of Ridgefield about leasing the state land in question", and that the letter to Salerno was "simply to indicate that the door was never shut to a proposal before the proposal was even advanced formally, even though there may be serious questions about its feasibility." With respect to local authorization, Westport submits an article from the April 11, 1974, Ridgefield *Press* in which a Selectman who attended the meeting at which the Resolution was passed, is quoted as saying that, "After the application [of Radio Ridgefield] is approved, he [Salerno] can change the site. . . ." Westport alleges that this quote suggests that Salerno obtained the Resolution by saying that he would not actually be using the site in question.

7. The Review Board will deny the requested issues.[7] The Commission has long held that an applicant need not demonstrate absolute assurance of site availability, nor legal control over its proposed site; rather, there must be a showing of "reasonable assurance" that the site is available. See, *e.g.*, *John Hutton Corp.*, 27 FCC 2d 214, 20 RR 2d 1159 (1971); and *North American Broadcasting Co.*, 15 FCC 2d 984, 15 RR 2d 367 (1969). It is also well established that local requirements for land use will be left to local authorities and that issues inquiring into such matters will not be specified, absent a "reasonable showing" that the applicant will be unable to obtain approval of his plans from local authorities. See, *e.g.*, *Edward G. Atsinger, III*, 29 FCC 2d 443, 21 RR 2d 1039 (1971); and *Lester H. Allen*, 20 FCC 2d 478, 17 RR 2d 914 (1969). In the present case, Westport's showing of the non-availability of Radio Ridgefield's site, which consists of a letter from Radio Ridgefield to the Judge concerning possible zoning difficulties, the affidavit of Burak and the letter from Hancock relating to the State's posture on this matter, does not constitute a sufficient showing that Radio Ridgefield does not have an available site. As an initial matter, the Board does not agree that the substance of the ap-

[6] Another intervenor, Berkshire, in reply to Radio Ridgefield's opposition, supports enlargement, arguing that the fact that Radio Ridgefield has itself supplied the information indicating apparent zoning difficulties distinguishes this proceeding from existing precedent. Moreover, declares Berkshire, Radio Ridgefield cannot be permitted to simultaneously argue that serious doubt exists as to whether it can obtain zoning approval and that it has reasonable assurance that such zoning approval will be forthcoming.

[7] Because Westport's petition and supplement are, respectively, based upon information and opinions contained in Radio Ridgefield's January 28, 1974 letter to the Administrative Law Judge and the subsequent testimony of Salerno on March 7, 1974, we will consider them as being in compliance with Commission Rule 1.229(b).

plicant's letter to the Presiding Judge supports Westport's claim; thus, while the letter does "question whether Radio Ridgefield could . . . now expect to obtain the height limitation variance necessary", it also unequivocally states that Radio Ridgefield "remains reasonably assured of its proposed transmitter site. . . ." And, in any event, even if the letter could be read as standing for the proposition urged by Westport, it could not be regarded as an adequate basis for the addition of a site availability issue. Rather, the Commission has traditionally been reluctant to consider requests for the addition of site availability issues based upon the predictions of local counsel or individual members of zoning authorities.[8] *Edward G. Atsinger, III, supra;* and *Ward L. Jones*, 7 FCC 2d 831, 9 RR 2d 1062 (1967). The Board is also of the opinion that neither the affidavit from Burak,[9] nor the letters from Hancock indicate that Radio Ridgefield will not be able to use its proposed site. To the contrary, Hancock states that "[t]he door certainly has not been shut on making available the transmitter site . . .", and the subsequent statement of this official, attached to Westport's reply to response to supplement, does not serve to contradict this statement. Thus, in the Board's view, petitioner has not come forward with evidence indicating that a local obstacle to obtaining the site exists or that the State would be reluctant to act favorably on Radio Ridgefield's proposal. *John Hutton Corp., supra;* and *RKO General, Inc. (WNAC–TV)*, 24 FCC 2d 240, 19 RR 2d 553 (1970). Rather, as the Board stated in its Memorandum Opinion and Order, *supra*, denying Westport's request for an earlier availability issue, "[a]bsent some showing that the State has taken some definitive step which would *preclude* construction of Radio Ridgefield's antenna system there is no basis for questioning the applicant's representation that the site is available." 41 FCC 2d at 984, 27 FCC 2d at 1639. (Emphasis added.)

8. The Board does not believe that the circumstances here require addition of Rule 1.65 and/or 1.514 or misrepresentation issues. The letter to the Administrative Law Judge is based on a series of events which, taken together, represent a recent trend of policy by the local zoning commission which makes a definite 30-day time limit impossible to impose with accuracy. Based on the sequence as indicated by Radio Ridgefield's letter and local newspaper articles attached to its opposition, it is the Board's view that Radio Ridgefield has acted with reasonable diligence in reporting the information in question when it did. Similarly, we do not believe that a misrepresentation issue is warranted. Although there is some contradiction between Burak's affidavit and Salerno's testimony, the extent and significance of the contradiction is not evident. Thus, Burak does aver that he met with Salerno in an official capacity as a State purchasing officer and that they did dis-

[8] The Board does not agree with Berkshire that the source of the information relied upon by Westport affects the showing necessary to support a request for enlargement of issues.

[9] Radio Ridgefield's contention that Salerno's testimony revealing this aspect of its negotiations for the site was improperly admitted and cannot be relied upon is ill-founded. The Administrative Law Judge specifically ruled that such testimony was relevant to the financial issue and it is formally a part of the record. The fact that this testimony was relevant in another context obviously cannot bar its admittance. Finally, objections to the admission of said testimony would more properly be contained in exceptions to the Initial Decision.

cuss the acquisition of the land in question. Finally, Hancock, the present State agent, although twice consulted about this matter, has presented no obstacle to such an acquisition and, therefore, it appears that there would be no motive for misrepresentation by Salerno. In short, the Board does not consider this minor discrepancy to be of such importance as to require further investigation in hearing.

9. Accordingly, IT IS ORDERED, That the petition for leave to supplement response, filed April 11, 1974, by Radio Ridgefield, Inc., IS GRANTED and the response IS ACCEPTED; and

10. IT IS FURTHER ORDERED, That the second motion to enlarge issues, filed January 30, 1974, and supplement thereto, filed March 20, 1974, by Westport Broadcasting Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74–493

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 1.1207, RULES OF PRACTICE AND PROCEDURE.

ORDER

(Adopted May 15, 1974; Released May 17, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. In accordance with our Memorandum Opinion and Order in Docket No. 19919 (FCC 74–81, January 23, 1974), we are herein amending Section 1.1207 of the Rules and Regulations. As indicated in the Memorandum Opinion and Order, at note 2, the purpose of the amendment is to delete from the present provision verbiage implying that trial-type evidentiary hearings are "required by statute" in rule making proceedings conducted under provisions of law listed in that section. The revised rule states that the *ex parte* rules apply to the listed rule making proceedings unless the Commission provides otherwise in a particular proceeding.

2. Authority for this amendment is contained in Sections 4 (i) and (j) and 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and 201(b). Because the amendment is procedural in nature, and because its purpose is to clairfy a misleading provision, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

3. In view of the foregoing, it is ordered, effective May 29, 1974, That Section 1.1207 of the Rules and Regulations is amended as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

In § 1.1207 the intro text is revised to read as follows:

§ 1.1207 Restricted rule making proceedings.

Except as otherwise ordered by the Commission, the following rule making proceedings are "restricted" from the day they are instituted until they have been decided by the Commission and are no longer subject to reconsideration by the Commission or review by any court:

* * * * * * *

FCC 74-505

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF SHO-N-TEL, INC., LICENSEE OF RADIO STATION KUIK, HILLSBORO, OREG.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 20, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture dated December 15, 1971, addressed to Sho-N-Tel, Inc., the licensee of Radio Station KUIK, Hillsboro, Oregon and (2) the licensee's response thereto dated November 10, 1973.

2. The Notice of Apparent Liability for forfeiture in the amount of five hundred dollars ($500) was issued for willful or repeated violation of Section 73.52(a) of the Commission's Rules and failure to observe the provisions of the station license, in that the station was operated with power in excess of that authorized during presunrise hours between January 28, 1971 and March 19, 1971 ranging from 66 watts to 101 watts above the authorized 500 watts.

3. In response to the Notice of Apparent Liability, the licensee furnished the Commission with information regarding its corporate history. It appears from licensee's response and Commission records that throughout the period commencing late in 1970 and continuing into the summer of 1973 there was no continuity of control of the licensee. This situation occurred by reason of claims and proceedings of the U.S. Internal Revenue Service (IRS) against the former president of the licensee, which resulted in the sale by IRS of his corporate stock in the licensee,[1] and by reason of litigation involving the right to vote the preferred stock and a mortgage foreclosure action against the licensee's broadcast facilities. The information furnished also indicated that the former president departed from the area after surrendering his stock to IRS. The incumbent president of the licensee purchased the stock from IRS on February 10, 1971 and his application for consent to the transfer of control was approved by the Commission, by delegated authority, on June 15, 1973. The response also indicated that the inadequacy of operating records pertinent to the period of the violations and the unavailability of former employees

[1] The shares sold constituted one hundred per cent of the issued and outstanding common stock of the licensee.

has placed the licensee in a position of being unable to respond to the Notice of Apparent Liability on the merits.

4. It is not the Commission's policy to relieve a licensee from liability for forfeiture merely because control of the licensee has changed since the occurrence of the violations. However, considering the particular circumstances of this case as above-stated, we find that the licensee should be relieved of liability.

5. Accordingly, IT IS ORDERED, That the Notice of Apparent Liability for forfeiture dated December 15, 1971 is hereby RESCINDED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-508

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
STAR STATIONS OF INDIANA, INC.	Docket No. 19122
For Renewal of License of WIFE and WIFE-FM, Indianapolis, Ind.	Files Nos. BR-1144 BRH-1276
INDIANAPOLIS BROADCASTING, INC.	Docket No. 19123
For a Construction Permit for a Standard Broadcast Station, Indianapolis, Ind.	File No. BP-18706
CENTRAL STATES BROADCASTING, INC.	Docket No. 19124
For Renewal of License of KOIL and KOIL-FM, Omaha, Nebr.	Files Nos. BR-516 BRH-992
STAR BROADCASTING, INC.	Docket No. 19125
For Renewal of License of KISN, Vancouver, Wash.	File No. BR-1027

ORDER

(Adopted May 15, 1974; Released May 21, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. Now before the Commission are: (a) a motion to expedite the scheduling of oral argument on the exceptions to the Initial Decision herein, which was filed by Indianapolis Broadcasting, Inc. (IBI) on March 11, 1974; and (b) the petitions of Star Stations of Indiana, Inc. (Star) to reopen the record and to enlarge issues, both filed on March 12, 1974; oppositions to these petitions filed on March 21, 1974, by the Chief, Broadcast Bureau; oppositions to these petitions filed on March 22, 1974, by IBI; and a reply to oppositions filed on April 8, 1974, by Star.

2. We shall first consider the petitions to reopen the record, enlarge issues, and remand the proceeding which were filed by Star because, if remand of the proceeding is warranted, IBI's request to expedite the scheduling of oral argument on the exceptions to the Initial Decision herein would be rendered moot. To warrant reopening of the record and remand of the proceeding at this stage, after the Judge's decision has been rendered,[1] requires a showing that petitioner relies upon newly discovered evidence, not previously obtainable by the exercise of due diligence, and that the allegations are sufficient to raise factual questions which could have a significant effect upon the outcome of the proceeding.

[1] The issues in this proceeding provide, *inter alia*, for a comparison of Star's renewal application for standard broadcast station WIFE which is licensed to operate at Indianapolis, Indiana, and the mutually exclusive application for construction permit which IBI filed. In the Initial Decision, the presiding Judge preferred IBI, denying the WIFE renewal application and granting IBI's proposal.

3. In its petitions Star asserts that on January 30, 1974, State and local police conducted a raid upon a gambling operation in Carmel, Indiana, and arrested 37 persons, including one of IBI's principals, John Ansted; that IBI proposes to integrate Ansted (a 15% stockholder) into operation of its proposed station at Indianapolis, Indiana, as the station's liaison with young people in the community; that Ansted has been charged with a violation of Section 10–4219 [2564] of the Indiana Statutes which specifies a maximum penalty of 60 days in jail and a $100 fine; that serious questions are raised as to the appropriateness of filling the position of liaison with youth with ". . . a person against whom gambling charges have been brought"; that IBI failed to report Ansted's arrest and conviction to the Commission; and that issues should be specified to determine the impact upon IBI's basic and comparative qualifications.

4. In addition, Star alleges that another IBI stockholder, Jack B. Simpson, has changed residence from Indiana to Florida; that IBI received comparative credit for the local residence of Simpson; that IBI's failure to report this fact is in violation of Section 1.65 of the Rules; and that this matter should also be considered in a further hearing.

5. IBI submits with its oppositions to the petitions an affidavit of Jack B. Simpson to the effect that, while he has purchased a house in Florida, he maintains his home, office and official residence in Indiana. Thus, IBI contends that there was no reporting failure. It claims also that there was no reporting failure with regard to Ansted because the Commission does not require an applicant to report a matter of this nature. Regarding the impact of the charge itself upon the Commission's processes, IBI contends that, since the Judge did not award IBI any comparative credit for Ansted's proposed participation in the station's operation, the matter has no comparative significance, and that the matter has no significance on IBI's basic qualifications because the violations of this provision of the Indiana statutes is no more serious than a traffic violation.

6. The Broadcast Bureau also opposes Star's petitions, asserting that Star has made no showing which would warrant a further hearing in this proceeding. The Bureau notes that Section II, paragraph 10(d) and (e) of our Application Form 301 requires an applicant to report pending legal proceedings involving a felony; any crime, not a felony, involving moral turpitude; and the violation of any law relating, *inter alia*, to unlawful lotteries. The Bureau contends that the charge against Ansted falls in none of those categories,[2] that this single gambling violation is not of such seriousness as to affect IBI's basic or comparative qualifications, and that it was not required to be reported under Section 1.65 of the Rules.

7. Star replied to the oppositions, contending that IBI has conceded the accuracy of its factual allegations with regard to Ansted without in any way justifying the applicant's failure to report the matter to the Commission, and that a hearing is required to permit

[2] The Bureau argues that Ansted's conduct does not involve moral turpitude, since only those crimes which are *malum in se* involve moral turpitude, since a crime is *malum in se* only if it is criminal by its inherent nature as well as by statute, and since gambling, which is permitted in some states, is prohibited in Indiana only by statute.

the Commission to assess the impact of these matters upon IBI's qualifications.

8. We are persuaded that the Broadcast Bureau's position is sound. This single misdemeanor offense does not involve moral turpitude or otherwise come within the categories to be reported on our Form 301. Since there is no suggestion that Ansted was engaged in running the gambling establishment or encouraged others to gamble, but only that he was there, and since IBI has satisfactorily explained Simpson's purchase of a house in Florida, we are also convinced that the showing made by Star is not sufficient to require a further hearing or to affect IBI's basic or comparative qualifications in this proceeding. For these reasons, we shall deny Star's petitions.

9. We next address IBI's motion to expedite the scheduling of oral argument on exceptions to the Initial Decision. IBI contends that over a year has passed since the release of the Initial Decision granting IBI's application;[3] that Star is still operating WIFE despite the Judge's conclusion that the public interest would best be served by IBI operating the station; that the public interest requires a speedy resolution of this case; and that the Commission has had ample time to schedule this proceeding for oral argument and should do so within 30 days. None of the other parties has filed arguments on the motion.

10. On what the Judge considered a close comparative assessment of the merits of these proposals, the scale was tipped in IBI's favor by his view that Star's principal had failed to provide adequate supervision of WIFE's operation, for which Star was deserving of a "decisive demerit." We find nothing in the Initial Decision to indicate that compelling public interest considerations warrant a precipitous termination of the present operator's stewardship of the station, and IBI has indicated none. While serious questions as to Star's qualifications are raised by the issues, and the Broadcast Bureau in particular takes exception to the Judge's resolution of them in Star's favor, we believe that the best practice is to provide for consideration of the parties' contentions as presented in the exceptions, briefs and at oral argument at a time when a fair and fully informed judgment can be rendered on those matters.

11. IBI has made no showing as to what public interest would be served by "speedy" resolution of this case. Assuredly, there has been no undue delay in scheduling oral argument. This proceeding has been under active consideration for several months and oral argument will be scheduled at an appropriate time.[4] However, our deliberations as to the complex factual and legal questions will be enhanced by more familiarity with the crucial aspects of this proceeding which involves a record exceeding 30 volumes, including the transcripts of 33 days of hearing; some 250 findings and conclusions; and over 175 exceptions. Therefore, the motion to set a date for oral argument at this time will be denied.

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[3] Ths assertion is factually correct. However, thereafter the proceeding was remanded and the significant date is September 21, 1973, when the parties' last pleading were filed before the Commission.

[4] The public interest requires the early resolution of all cases and thus consideration of this proceeding must also be consistent with the orderly disposition of other equally important matters.

104-040—74——9

12. Accordingly, IT IS ORDERED, That the motion to expedite scheduling of oral argument filed by Indianapolis Broadcasting, Inc. on March 11, 1974, IS DENIED.

13. IT IS FURTHER ORDERED, That the petitions to reopen the record and to enlarge issues filed on March 12, 1974, by Star Stations of Indiana, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-517

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re STUDIO BROADCASTING SYSTEM DIVISION, TOPEKA, KANS. Request for Special Relief	CSR-60 (KS042) CSR-61 (KS024) CSR-65 (KS001) CSR-66 (KS040) CSR-67 (KS031)

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER QUELLO NOT PARTICIPATING.

1. Television Broadcast Station KTSB, Channel 27 (NBC), Topeka, Kansas, is carried on the following Kansas cable television systems, each of which is located within at least the predicted Grade B contour of Station KTSB: Manhattan Cable TV Services, Inc., Manhattan; Cypress Cable TV, Inc., Hiawatha; Cablevision (Division of American Television and Communications Corporation), Emporia; Junction City TV, Inc., Junction City; and Fort Riley Cable TV Services, Inc., Fort Riley. Except for Hiawatha, which is within the St. Joseph, Missouri, smaller television market, each community is outside of all television markets. On April 15, 1972, Studio Broadcasting System Division, licensee of Station KTSB, filed a "Request for Special Relief" directed against each of the five cable systems. The petitions were filed pursuant to both Sections 76.7 and 76.93(b) of the Commission's Rules and requested same-day exclusivity protection for KTSB's network programming. Each cable system filed an opposition. To the extent these petitions invoked Section 76.93(b) in its pre-*Reconsideration* form, they were dismissed as moot by the Cable Television Bureau; to the extent they are considered requests for special relief per Section 76.7, they will be considered herein.

2. Section 76.93(b) of the Rules, as set forth in the *Cable Television Report and Order*, 36 FCC 2d 143 (1972), provided that same-day network program exclusivity would be afforded to stations under certain circumstances resulting from a time zone situation (i.e., where a signal is carried from one time zone to another). The automatic stay provision of that section, which KTSB sought to invoke, was available only to those stations already receiving same-day exclusivity and involved in the time zone situation. Section 76.93(b) was subsequently amended by the *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326 (1972), to provide that stations licensed to communities in the Mountain Time Zone, not in the first fifty major television markets, would be entitled to same-day exclusivity. With this change in the rules, the petitions filed on behalf of KTSB involved

neither a time zone situation nor systems in the Mountain Time Zone, and Section 76.93(b) of the Rules did not apply: consequently, the automatic stay provision could not be properly invoked by KTSB (against the cable systems). Further, the petitions were not supplemented within 60 days of the effective date of the *Reconsideration* to demonstrate their continued relevance. Therefore, they were dismissed (*Public Notice Report*, No. 847, November 24, 1972). However, since these petitions were properly filed pursuant to Section 76.7 of the Rules, they were subsequently reinstated to the extent that they requested special relief from the network exclusivity rules.

3. Studio asserts that Station KTSB should be afforded same-day network program exclusivity because: (a) it carries programs from the ABC Television Network as well as the NBC Television Network and from time to time must carry some network programs on a delayed basis; (b) it is one of two commercial television broadcast stations operating in Topeka, the other being a VHF station; and (c) failure to receive same-day protection will cause serious economic harm due to fractionalization of its audience. The cable systems assert that same-day protection would deprive their subscribers of a choice between viewing hours, and that special relief should not be afforded to correct a problem created by the station's program scheduling.

4. We rule on Studio's arguments as follows: (a) simultaneous exclusivity was adopted to provide effective protection for an affiliate's network programming while maximizing the choice of convenient viewing hours for the public (Par. 99, *Cable Television Report and Order*, 36 FCC 2d 143, (1972); and Par. 30, *Reconsideration of the Cable Television Report and Order*, 36 FCC 326 (1972)). We are not convinced in this instance that the rule no longer achieves these purposes; (b) a station is not entitled to additional protection merely because it is a UHF station competing with a VHF station in the same market; and (c) no evidence has been submitted to substantiate the claim of economic injury. (See *Tygart Valley Cable Corp.*, FCC 73–1178 43 FCC 2d 966, and *Central New York Cable TV, Inc.*, 11 FCC 2d 150 (1967), for discussions of the evidentiary burden which must be sustained by petitions requesting special relief.)

In view of the foregoing, the Commission finds that a grant of the request for same-day network program exclusivity would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Request for Special Relief," filed April 15, 1972, by Studio Broadcasting System Division, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-521

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of TEL-TECH CABLE TV, INC., WASHBURN, MAINE For Certificate of Compliance	CAC-2213, CACR-5 (ME052)

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 30, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On December 12, 1973, Tel-Tech Cable TV, Inc. was certified (CAC-2213; Cert. No. 1470) to commence operating a cable television system at Washburn, Maine, a community of 1,914 people, located in a smaller television market. It will provide the following television broadcast signals:

WAGM-TV (ABC, CBS, NBC, channel 8), Presque Isle, Maine
WMEM-TV (educational, channel 10), Presque Isle, Maine
WEMT (ABC, channel 7), Bangor, Maine
WLBZ-TV (NBC, channel 2), Bangor, Maine
CHSJ-TV-1 (CBC, channel 6), Bon Accord, N.B., Canada

Because the Town Council of Washburn only grants year-to-year "cable permits to do business", and because Tel-Tech's previous certification expired coincident with the January 4, 1974, expiration of its permit, Tel-Tech filed its "Application for Certificate of Compliance for a Proposed Cable Television System and Petition for Special Relief," on January 7, 1974.[1] Tel-Tech now seeks re-certification and requests waiver of Section 76.11(d) of the rules, which in this instance would require annual applications for certificates of compliance.

2. Tel-Tech argues, in its petition, that the local policy of yearly review of permittees' qualifications and performance, and year-to-year permits, coupled with the Commission's re-certification requirement in Section 76.11(d), creates an undue administrative and economic burden for the system. It concedes that local, yearly review, per se, may well serve the public interest. However, each renewed permit is distinguished from the last only by the new expiration date. Therefore Tel-Tech asks the Commission to waive Section 76.11(d), and to annually renew its certificate merely upon notification to the Commission, thirty days prior to the permit's annual expiration, that the Town has reviewed and renewed its permit to Tel-Tech.

3. The Commission is not unaware of the difficulties noted by Tel-Tech. Indeed in our recently released *Clarification of Rules and Notice of Proposed Rulemaking*[2] we announced that we will consider a rule

[1] By amendment of March 8, 1974, Tel-Tech has filed its new permit to do business which will expire on January 8, 1975.
[2] FCC 74-384 —— FCC 2d —— (Docket No. 20021).

imposing a minimum francise term possibly between 5 or 7 years. We stated in paragraph 73 of the *Clarification:*

> In some cases, certificates of compliance are being sought for franchises with a one-year term. We question the advisability of this short a franchise duration. The capital costs and commitments involved in building a cable television system would seem to dictate against entrepreneurs accepting such short terms. We understand that in some states a year-to-year franchise is easier to secure than a term franchise necessitating a public referendum. However, such year-to-year franchises impose significant risks and increased administrative burdens.

4. Until this issue is resolved, however, we are persuaded that the proposal put forth by Tel-Tech is reasonable. Accordingly, we shall grant the requested certification until March 31, 1977, with the understanding that we receive yearly notification of the permit renewals and with the further understanding that our certificate shall automatically expire, prior to March 31, 1977, should the community of Washburn either revoke their permit or materially alter it in any manner affecting the substance of our franchise standards.

In view of the foregoing, the Commission finds that a grant of the above-captioned application and the petition for special relief will be in the public interest.

Accordingly, IT IS ORDERED, That the Petition for Special Relief and Waiver of Section 76.11(d) of the Commission's Rules IS GRANTED consistent with the terms of paragraph 4 herein.

IT IS FURTHER ORDERED, That the application for a certificate of compliance (CACR–5), filed by Tel-Tech Cable TV, Inc. IS GRANTED consistent with the terms of paragraph 4 herein.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74–522

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THETA CABLE OF CALIFORNIA, TEMPLE CITY, CALIF. For Certificate of Compliance	CAC–1221 CA529

MEMORANDUM OPINION AND ORDER

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. Theta Cable of California, proposed operator of a cable television system at Temple City, California, located within the Los Angeles-San Bernardino-Corona-Fontana, California, major television market (#2), has filed an application for a certificate of compliance, pursuant to Section 76.13(a) of the Commission's Rules, requesting certification for the following television broadcast signals: [1]

KNXT (CBS, channel 2), Los Angeles, California
KNBC (NBC, channel 4), Los Angeles, California
KTLA (independent, channel 5), Los Angeles, California
KABC–TV (ABC, channel 7), Los Angeles, California
KHJ–TV (independent, channel 9), Los Angeles, California
KTTV (independent, channel 11), Los Angeles, California
KCOP (independent, channel 13), Los Angeles, California
KLXA–TV (independent, channel 40), Fontana, Califronia
KCET (educational, channel 28), Los Angeles, California
KWHY–TV (independent, channel 22), Los Angeles, California
KMEX–TV (independent, channel 34), Los Angeles, California
KBSC–TV (independent, channel 52), Corona, California
KHOF–TV (independent, channel 30), San Bernardino, California
KVST–TV (educational, channel 68), Los Angeles, California
KLCS (educational, channel 58), Los Angeles, California

Carriage of these signals is consistent with Section 76.61 of the Rules, applicant's access proposal is consistent with Section 76.251 of the Rules, and the application is unopposed. The franchise agreement, entered into on March 28, 1972, in accordance with City Ordinance No. 71–329, adopted July 6, 1971, amended by City Ordinance No. 73–374, adopted July 17, 1973, strictly complies with the requirements of Section 76.31(a) of the Rules. However, since the ordinance provides for a franchise fee of 5 percent of gross subscriber revenues, Section

[1] Temple City has a population of 31,040. The proposed cable system will have 35-channel capacity. Of these channels, 15 are to be used for television broadcast signal carriage and four for access cablecasting.

76.31(b) of the Rules requires that the reasonableness of the fee be justified.

2. Theta Cable maintains that the 5 percent franchise fee is reasonable and will not interfere with its ability to provide cable services consistent with the Commission's access and program origination goals. The City of Temple City asserts that it requires the 5 percent fee to help defray the costs of a regulatory program in which it will inspect Theta Cable's records, supervise performance tests, monitor citizen's complaints, deal with unanswered complaints, resolve disputes between subscribers and Theta Cable, and advertise the role of cable television in Temple City. Specifically, the City of Temple City proposes to hire an additional staff of one full- and one half-time employee the first year and two employees thereafter, to retain consultants for specific tasks, and to allocate a substantial proportion of the work week of the Assistant to the City Manager to cable television duties. Its tentative annual budget for the regulatory part of its cable program is $23,568 the first year and $34,386 thereafter. Theta Cable projects that the 5 percent franchise fee will generate $1,239 the first year of operations; this will rise to $13,089 by the third year and to $24,360 by the tenth year.[2]

3. The franchise fee is within the zone of reasonableness contemplated in the *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143 (1972). Temple City has presented a proposed budget detailing the number of employees and the extra consultant services required to implement the local regulatory program. This program appears to be appropriate. Therefore, in view of the anticipated additional staff needed to carry out the regulatory program and Theta Cable's statement that the fee paid will not interfere with its operations, we believe that the franchise fee showings meet the criteria established in Section 76.31(b) of the Rules. *Hawkeye Cablevision, Inc.*, FCC 74–434, —— FCC 2d —— (1974).

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application for Certificate of Compliance" (CAC–1221), filed by Theta Cable of California, IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] We look forward to receiving from Theta Cable the names of those officials designated to carry out Temple City's regulatory program so that we may assist them in any way possible.

FCC 74-512

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
TRIANGLE WOMEN'S RADIO, INC., DURHAM, N.C.
Requests: 91.5 MHz, No. 218; 50 kW (H & V) 340 feet
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted May 15, 1974; Released May 21, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. The Commission has before it the above application and a petition for reconsideration of our January 9, 1974, action in which we returned the application as unacceptable for filing.

2. The captioned application of Triangle Women's Radio, Incorporated (Triangle), for a construction permit for a new noncommercial educational FM broadcast station in Durham, North Carolina, was filed on December 18, 1973. On January 9, 1974, we returned the application because the channel which Triangle had selected for its proposed station was assigned to the University of North Carolina at Chapel Hill, which is the licensee of station WUNC, Chapel Hill. Action on the University's license renewal application has been deferred since December 1, 1972, because station WUNC has been off the air for a considerable period due to budgetary problems. Section 1.516(e) of the Commission's rules states that an application for a construction permit for a new broadcast station will not be accepted for filing if it is mutually exclusive with an application for renewal of license of an existing broadcast station unless it is tendered for filing within a specified time period.[1] Triangle's application was not filed within that time period. Thus, even though station WUNC has been silent for an extended period, the channel on which it is licensed is not currently available for assignment to other applicants. Accordingly, Triangle's application was returned as being unacceptable for filing.

3. In its petition for reconsideration, Triangle requests waiver of any Commission rule, regulation or requirement with which its application does not comply. It bases its request in part on a staff letter of December 10, 1971, which was sent to the University of North Carolina (University). That letter explained that educational broadcast stations are not required to maintain a minimum operating schedule or to seek authority to suspend broadcasting. In addition, the letter explained that the Commission remains flexible in situations where an

[1] In order to comply with section 1.516(e) of the rules, Triangle would have had to file its application by November 1, 1972.

educational institution decides to temporarily discontinue broadcasting because of budgetary problems, when the institution expresses a desire to resume operations when feasible and that station is located in an area where noncommercial educational FM channels are theoretically available for use by qualified applicants. Further, the letter did indicate that "some definitive action may be required" by the Commission if a party seeking to operate a noncommercial educational facility in the area establishes that the University's channel is the only practical channel available for its use. It is noted that Triangle claims that WUNC's channel is the only practical channel available for use by Triangle's proposed station. Triangle's petition also stresses that station WUNC has not transmitted any programs for a considerable period of time and that sources at the University of North Carolina had indicated that the University intended to surrender WUNC's license. Nevertheless, the University has recently filed an application (File No. BPED–1,769) for authority to modify the technical facilities of station WUNC, and has expressed an intention to reactivate the station if it can obtain sufficient funds from the Department of Health, Education and Welfare and from the State legislature.

4. In light of the foregoing, we do not believe that Triangle has presented any compelling public interest reasons for waiving section 1.516(e) of the rules and accepting its application for filing. The University has expressed a definite intent to reactivate station WUNC, and has filed appropriate applications with the Commission and the Department of Health, Education and Welfare to effectuate its intent. Further, the channel on which the University is licensed does not appear to be the only channel available for use by an educational organization in the general area surrounding Durham, North Carolina, even though it does appear to be the only channel available for use by facilities of the magnitude presently contemplated by Triangle.

5. Accordingly, IT IS ORDERED, That the petition for reconsideration of our January 9, 1974, action returning Triangle Women's Radio, Incorporated's, application IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-515

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications for Renewal of License filed by UNITED TELEPHONE CO. OF OHIO For Radio Common Carrier Stations KQA459 and KQA651 in the Domestic Public Land Mobile Radio Service at Lima and Bellefontaine, Ohio	Docket No. 19072 Files Nos. 548-C2-R-70, 549-C2-R-70

APPEARANCES

Lloyd D. Young (Chadbourne, Parke, Whiteside & Wolff) on behalf of United Telephone Company of Ohio; *James M. Carpenter* on behalf of Carpenter Radio Company; and *James O. Juntilla, John J. O'Malley, Jr.* and *Daniel Morper* on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission.

DECISION

(Adopted May 22, 1974; Released May 29, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. The above captioned applications of United Telephone Company of Ohio were designated for hearing by our Memorandum Opinion and Order, 26 FCC 2d 417, released November 6, 1970. Issues were specified therein to determine whether United, in connection with the rates charged to the miscellaneous or radio common carriers (RCCs) and others for interconnection with its landline facilities, had engaged in pricing practices which were anticompetitive, monopolistic or otherwise unlawful or contrary to the public interest; if so, whether the Commission should prescribe just and reasonable charges, and what the charges should be; and, in the light of the evidence adduced pursuant to the aforementioned issues, whether a grant of United's renewal applications would serve the public interest. In an Initial Decision, FCC 72D-16, Administrative Law Judge Lenore G. Ehrig resolved the issues in favor of United and granted its renewal applications.

2. Upon our review of the Initial Decision pursuant to the exceptions and briefs filed by Carpenter Radio Company (Carpenter Radio), the Ohio Association of Radio Common Carriers (Association) and the Chief, Common Carrier Bureau (Bureau), we concluded in a Memorandum Opinion and Order, 39 FCC 2d 845, released February 5, 1973, that additional evidence was necessary to enable the Commission to resolve the issue going to the matter of anticompetitive or monopolistic pricing practices. The proceedings were therefore re-

opened and remanded for further hearing with directions that United "establish the costs upon which its charges for interconnection are based" and that it "have the burden of proving that the charges are reasonable and do not give United unwarranted competitive advantage."

3. A prehearing conference was held on March 20, 1973 and hearings were held on May 30 and 31, and June 1, 1973. At the reopened hearings, United introduced the testimony of two witnesses: Mr. James L. Gilliland, a certified public accountant and the Controller of United; and Mr. Paul E. Murphy, United's General Plant Extension Engineer. In addition, it introduced into evidence a number of exhibits for the purpose of meeting its burden of proof on the remanded issue. No rebuttal evidence was presented by either Carpenter Radio or the Association. On November 6, 1973, the Administrative Law Judge (ALJ) released her Supplemental Initial Decision (FCC 73D–58). Exceptions to the Initial Decision and a brief in support of the exceptions were filed by Carpenter Radio on December 6, 1973; and replies to the exceptions were filed by the Bureau and by United on December 19, 1973. No pleadings directed to the Supplemental Initial Decision were submitted by the Association.

4. In her Supplemental Initial Decision, the ALJ found that the monthly interconnection charge by United to the RCCs is $15.00 per month per interconnecting line, plus $1.00 per month per two-way mobile unit; and that the cost studies conducted by United together with the other evidence of record establish that the cost to United for providing the facilities used to connect a radio common carrier to the telephone company network is $14.60 per working line per month. On the basis of the foregoing, the ALJ concluded that the $15.00 per month charge for an interconnecting line is reasonable and does not give United an unwarranted competitive advantage. However, she further held that, since United had not made a cost study to substantiate the $1.00 per month per mobile unit charge to the RCCs and had not otherwise met its burden of proving the reasonableness of this charge, it must be disallowed.

5. The next matter considered by the ALJ was whether United's charges to the public for its own mobile radio operations were compensatory or whether the service was being offered below cost in order to injure competing RCCs. In this connection she found that the carrying charges attributable to United's mobile service was $16,235; that the revenues received from that service during 1972 amounted to $21,650; and that these figures establish a rate of return of 7.11% plus an amount for Federal income taxes. The ALJ therefore concluded United's charges are compensatory, and that they do not give the telephone company an unwarranted competitive advantage. In view of these findings and conclusions and the findings and conclusions set forth in her Initial Decision released on March 2, 1972, to the effect that United had not engaged in improper or unlawful pricing practices, the ALJ determined that a grant of United's renewal applications would serve the public interest.

6. We have examined the Initial Decision and Supplemental Initial Decision of the ALJ in the light of the exceptions and briefs filed by the parties and we find no basis for disturbing her findings and con-

clusions in any material respect. The ALJ's decisions fully discuss the issues, her findings accurately reflect the evidence of record and her conclusions are supported by substantial and probative evidence. Except to the limited extent that the ALJ's findings are modified by our rulings on the exceptions, which are attached hereto as an Appendix, her findings, conclusions and ultimate disposition are affirmed.

7. Carpenter Radio's principal argument is that United's failure to justify the $1.00 per month per mobile unit charge, which was therefore disallowed by the ALJ, demonstrates that the telephone company engaged in anticompetitive or monopolistic pricing practices which require a denial of its renewal applications. While the failure to justify the $1.00 charge is a matter which must be considered in determining whether United engaged in improper or unlawful pricing practices, we do not believe that the sanction urged by Carpenter Radio is warranted under the circumstances of this case. The charge was disallowed because the cost study performed by United did not include information on this subject and the explanation advanced by United for its imposition was insufficient to justify the charge. However, an erroneous view as to what constitutes a sufficient basis for a charge does not establish misconduct which would warrant a denial of a renewal application, and there is no other evidence of record which would support a finding that United engaged in anticompetitive or monopolistic pricing practices for the purpose of gaining a competitive advantage over the non-wireline carriers.

8. Carpenter Radio further asserts that the cost study submitted by United is insufficient and inaccurate, and that the testimony of United's witnesses, James L. Gilliland and Paul E. Murphy, should have been excluded. These contentions must be rejected since the evidence was adduced pursuant to our remand order and it manifestly is relevant to the issues in this proceeding. The admissibility of the evidence and the weight and sufficiency thereof were fully considered by the Presiding Judge and we agree with her determinations with respect thereto. Other contentions made in Carpenter Radio's exceptions[1] and in its brief have been considered but we are not persuaded that any change in the ALJ's disposition of this proceeding is warranted. In agreement with the ALJ we conclude that a grant of United's renewal applications will serve the public interest.

9. Accordingly, IT IS ORDERED, That the findings, conclusions and ultimate disposition of Administrative Law Judge Lenore G. Ehrig in this proceeding ARE AFFIRMED; and that the applications of United Telephone Company of Ohio for renewal of licenses for Radio Common Carrier Stations KQA459 and KQA651 in the Domestic Public Land Mobile Radio Service at Lima, Ohio and Bellefontaine, Ohio, ARE GRANTED; and

10. IT IS FURTHER ORDERED, That the request of Carpenter Radio Company for oral argument IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[1] Many of the exceptions filed by Carpenter Radio are clearly deficient in that they fail to "point out with particularity alleged errors in the decision" and do not "contain specific references to the page or pages of the transcript of hearing, exhibit or order if any on which the exception is based" as required by Section 1.277(a) of the Rules.

APPENDIX

Rulings on the Exceptions of Carpenter Radio Company

Exception No.	*Ruling*
1, 2, 3, 4	Denied. Carpenter Radio was accorded all rights of a party throughout this proceeding; it was accorded the opportunity to participate fully at prehearing conferences and hearings; and it has failed to demonstrate that it was prejudiced in any way by the change in dates of a prehearing conference. Moreover, the exceptions do not comply with the requirements of section 1.277(a) of the rules.
5, 6	Denied for noncompliance with section 1.277(a) of the rules. Furthermore, the testimony of Mr. Gilliland and Mr. Murphy was admissible into evidence and their testimony was properly considered by the Administrative Law Judge.
7, 8, 9, 10, 14	Denied for noncompliance with section 1.277(a) of the rules; also because the findings of the ALJ and her analysis of the testimony and exhibits accurately and adequately reflect the evidence of record.
11	Denied. The matter raised is not of decisional significance.
12, 13	Granted. United does not provide a one-way paging service in Bellefontaine and no paging antenna is located on its tower at Bellefontaine. However, the findings are without decisional significance and Carpenter Radio was not prejudiced thereby.
15	Denied for the reasons stated in our decision; also because the ALJ's findings and conclusions are supported by substantial and probative evidence, and correctly reflect the record.
16, 17	Denied. The ALJ's findings and conclusions are supported by substantial and probative evidence and accurately reflect the record.

FCC 72D-16

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications for Renewal of License Filed by UNITED TELEPHONE CO. OF OHIO For Radio Common Carrier Stations KQA459 and KQA651 in the Domestic Public Land Mobile Radio Service at Lima and Bellefontaine, Ohio	Docket No. 19072 Files Nos. 548-C2-R-70, 549-C2-R-70

APPEARANCES

Lloyd D. Young, *John M. Lothschuetz*, and *Warren E. Baker*, on behalf of United Telephone Company of Ohio; *Leo I. George* and *Norman Jorgensen*, on behalf of Ohio Association of Radio Common Carriers, Inc.; *James M. Carpenter* and *Miriam G. Carpenter*, on behalf of Carpenter Radio Company; *John J. O'Malley* and *William Fishman*, on behalf of the Chief, Common Carrier Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER LENORE G. EHRIG

(Issued March 1, 1972; Released March 2, 1972)

PRELIMINARY STATEMENT

1. United Telephone Company of Ohio is a wholly-owned subsidiary of United Utilities, Incorporated. United was incorporated under the laws of the State of Ohio as the Mansfield-United Telephone Company. In 1966, its name was changed to United Telephone Company of Ohio. In 1968, United merged with or acquired eight Ohio telephone companies, one of which was the Lima Telephone Company.

2. United's parent, United Utilities, Inc., is the second largest independent telephone holding company in the United States. It owns substantially all of the common stock of 21 telephone operating companies, the "United Telephone System". United is the largest operating company in the system.

3. The present proceeding arose from United's filing of license renewal applications for Radio Stations KQA459 at Lima, Ohio, and KQA651 at Bellefontaine, Ohio. Petitions to deny both applications were filed by the Ohio Association of Radio Common Carriers, Inc. and by Carpenter Radio Company, a partnership made up of James M. Carpenter and his wife, Miriam G. Carpenter. The Ohio Association is a non-profit Ohio corporation whose membership includes eight of the nine miscellaneous common carriers certificated by the State of Ohio. Carpenter Radio Company, one of these eight, is located in Lima, Ohio. The partnership holds two radio station licenses: KQK730,

granted in 1965, and KQZ726, granted in 1969. KQK730 authorizes the operation of two-way mobile radio telephone service on the base station frequency of 152.21 MHz, with one-way tone-plus-voice signaling permitted on a secondary basis. KQZ726 authorizes one-way signaling using both tone-only and tone-plus-voice communications on 152.24 MHz. Carpenter also holds Certificate of Public Convenience and Necessity No. 10 issued by the Public Utilities Commission of Ohio on August 19, 1968, authorizing the rendering of mobile telephone service to the public in the Lima, Ohio, area through the joint use of facilities between Carpenter and United, "when necessary, to afford car-to-car, car to landline, landline to car, and one-way signaling and message service. . . ." The Carpenter Radio Company is an adjunct of the Telephone Answering Service of Lima, Inc., a family corporation providing full-time telephone answering services to approximately 185 customers, including physicians, nurses, an ambulance service, and a variety of business enterprises. Telephone Answering Service of Lima, Inc. is also an agent for Western Union, providing teletype service 17½ hours a day plus Sundays and holidays, and monitors business alarm systems.

4. In its Memorandum Opinion and Order designating these applications for an evidentiary hearing, the Commission found that substantial questions had been raised regarding not only United's pricing practices pertaining to its one-way signaling (radio paging) service, but also its interconnection charges for competing radio common carriers. The Commission concluded that if these allegations were true, they might well indicate violations of anti-trust policy and, through the broad public interest standard of Title III of the Communications Act, require United's disqualification to hold a radio license.

5. Accordingly, the Commission named the Ohio Association and Carpenter parties to the proceeding and designated the United applications for evidentiary hearing on the following issues:

> 1. To determine whether United Telephone of Ohio, in connection with the rates charged for one-way radio paging services has engaged in any pricing practices which are: (a) anti-competitive or monopolistic; (b) contrary to the public interest standards of the Communications Act; (c) in violation of any rule, decision, or policy of the Federal Communications Commission.
>
> 2. To determine whether United Telephone of Ohio, in connection with the rates charged to miscellaneous common carriers and to others for interconnection with the landline facilities of United, has engaged in any pricing practices which are: (a) anti-competitive or monopolistic; (b) in violation of any provision of the Communications Act or contrary to the public interest standards thereof; (c) in violation of any rule, decision, or policy of the Federal Communications Commission; and if so, whether the Commission should prescribe just and reasonable interconnection charges, and what such charges should be, pursuant to Section 201(a) of the Act, 47 U.S.C. Section 201(a).
>
> 3. To determine whether grant of the above-captioned renewal applications would serve the public interest, convenience, and nec-

essity, in light of the evidence adduced pursuant to Issues (1) and (2) above and the matter referred to in paragraph 9, *supra*.[1]

6. The Commission specifically noted that the Ohio Association's allegations had raised substantial and material questions of fact and law concerning costs and other data almost wholly within the knowledge of United and that United had in its responsive pleadings, failed to rebut these allegations. Under these circumstances, the Commission placed the burden of proceeding and the burden of proof on all three issues on United.

7. Prehearing conferences were held on December 14, 1970, and February 23, 1971. Hearings were held on June 28, 29, 30, October 12, 13, 14, November 8, 9, 10, 22, and December 7, 1971. Proposed Findings of Fact and Conclusions of Law were filed by all parties. Replies were filed by all except the Common Carrier Bureau. United and the Ohio Association filed briefs in support of their positions.

FINDINGS OF FACT

One-Way Radio Paging Service

8. United has been providing telephone service in the Bellefontaine, Lima, and Mansfield, Ohio areas since 1968 when it merged with the Lima Telephone Company and seven other independent telephone companies. While United provides two-way mobile radiotelephone service in all three of these communities, it provides one-way radio paging service only in Lima and Mansfield. United has not provided, nor does it intend to provide, one-way paging service in Bellefontaine. All of the evidence in this record focused on Lima.

9. In Lima, Ohio, United's predecessor, the Lima Telephone Company, initiated one-way paging service on May 2, 1961. The rate charged in 1961 was $12.00 per month per paging unit. The same rate is applicable to paging service in Lima today. An extensive search of the records of the Lima Telephone Company by United produced no cost data or information which would provide a basis for this $12.00 charge. Mr. John F. O'Connell, United's Vice President-Operations, testified that insofar as he could determine, this rate was premised upon a "special arrangement or assemblage" method of computing charges as set forth in the Lima Telephone Company's tariff. He further stated that he understood that the $12.00 charge was largely based upon the rates charged by Ohio Bell in 1961 for comparable paging services. Except for the purchase of three paging receivers, the equipment that was installed and operated in 1961 to provide radio paging service in Lima is the same equipment being used today to provide this service.

10. In Mansfield, Ohio, the Mansfield Telephone Company, predecessor company to United, also initiated one-way radio paging service in 1961. The initial charge for this service was $7.50 per month per unit, again apparently derived from a "special assemblage" method of

[1] Paragraph 9 reads in pertinent part: "Both licenses involved here were issued to United on a short term basis, following the assignment of facilities to United without the necessary Commission consent, in violation of 47 U.S.C. Section 310(b). In our letter to United of December 18, 1968, granting the short term licenses we stated that 'further violations of the Act or the Rules may raise substantial questions concerning the qualifications of your company to continue as a Commission licensee'. While we are not designating a specific issue to cover this aspect of United's history, it may be relevant to any determination reached herein."

computation. This charge was increased by United to $12.00 per month per unit on October 1, 1970, in order to obtain uniformity of rates for the same type service.

11. United's only witness was the above referred to Mr. John F. O'Connell, since January 1971 its Vice President-Operations. Although Mr. O'Connell has only been with United since January 1970, he had 29 years of experience in the plant and engineering departments of the General Telephone System. Mr. O'Connell testified that his experience has included a number of assignments in designing, costing, and directing the operations of paging systems of telephone companies. In his positions with United, Mr. O'Connell also testified that he was required to become familiar with all aspects of United's paging systems, including their technical operations and associated costs.

12. As part of the prehearing discovery process, the Ohio Association directed interrogatories to United. United filed answers to certain of these, objections to others. In response to Ohio's Motion to Compel United to provide the requested information, the Examiner agreed with Ohio that United's rate level is clearly in issue here since allegations concerning the anti-competitive effect of allegedly non-compensatory prices go to the heart of this proceeding. Accordingly, The Examiner directed United to provide an actual cost study for the most recent twelve months period showing investment, costs and revenues for its one-way paging service in question, and the ratio of net operating earnings to net investment.

13. The crux of United's case is this cost study. First submitted in answer to Ohio's interrogatories, it was modified at the hearing to meet questions which had been made known to United by the Common Carrier Bureau, as well as to meet objections made during the course of the hearing. As modified, the cost study of United's one-way paging service in Lima, Ohio shows the following:

Total investment in central office equipment	$4,869.50
Less: Depreciation reserve	2,589.93
Net investment in central office equipment	2,279.57
Total investment in station apparatus—26 units [2]	2,809.82
Less: Depreciation reserve	781.30
Net investment station apparatus	2,028.52
Total investment:	
Land	18.79
Building	218.63

[2] In its cost study, United had provided for only 25 paging receivers—22 revenue producing, and three reserve units—as used and useful in its one-way paging service in Lima. The Common Carrier Bureau takes the position that this number does not allow for either an above-average number of pagers out of service for repair, or for service to any new customers. It accordingly urges that it would be more realistic for United to base its rate for this service on 26 paging receivers rather than 25. The Examiner agrees with the Bureau's view and has modified United's cost study so as to add $108.07, representing the cost of an additional unit. The Examiner rejects the recommendation of the Ohio Association that the number of paging units be increased by 13—four as reserve units, which the Examiner has done, and the nine more to represent the number used by United's employees. The latter, used for company business, must be allocated to all services, and not just the one represented by the equipment itself. See *A.T. & T.* and *Western Union Private Line Cases*, 34 FCC 217, 258–263 (1963).

Less: Reserve on building	76.67
Net investment land and building	160.75
Net investment central office equipment	[3] 2,279.57
Net investment station apparatus	2,028.52
Total net investment	4,468.84

	Cost factors	Per unit per month	Annual total
Revenue: 22 units @ $12 per month		12.00	$3,168.00
Expenses:			
Administrative	0.0334	1.00	[4] 264.41
Taxes other than Federal income (F.I.) tax	.0236	.71	186.84
Depreciation central office equipment	.0514	.95	250.29
Depreciation station apparatus	.0685	.73	192.47
Depreciation building	.0290	.02	6.34
Maintenance station apparatus	.0963	.99	[5] 261.36
Maintenance central office equipment	.0639	1.18	311.16
Maintenance building	.0100	.01	2.19
F.I. Tax—Central office	.0399	.74	194.29
F.I. Tax—Station apparatus	.0360	.38	101.15
F.I. Tax—Building	.0433	.04	9.47
Traffic costs (actual study)		2.84	749.76
Battery replacement		1.16	[6] 306.24
Total expenses			2,835.97

[3] The Ohio Association points out that there has been no allocation in "Central Office Equipment" for the supporting structure or tower of the one-way signaling antenna. The testimony reveals, however, that the tower on which the paging antenna is located was designed and built in 1960 for the purpose of supporting two microwave radio station reflectors having dead weight of approximately 700 pounds, and with structural design parameters ample to support these reflectors when their large surfaces are exposed to the heavy wind loadings of about 54,000 pounds which are associated with these reflectors. After the tower was built for the foregoing purpose, the paging antenna was installed on the tower without further investment or construction for the supporting structure. The dead weight associated with the paging antenna is about 24 pounds, and wind loadings of about 46 pounds occur for winds of 87 miles per hour. The pro-rated cost of the tower attributable to United's one-way signaling service in Lima would thus be de minimis.

[4] The Ohio Association argues that the legal and related expenses incurred in prosecuting regulatory matters involving one-way paging service before state and federal regulatory bodies should have been reflected in United's cost study under "Administrative Expenses." Under the Commission's Rules, however, such expenses are charged, as United has done, to general office salaries and expenses, with the costs distributed across all services. See Section 31.664 of the Commission's Rules.

[5] In its cost study, United included $260.17 (should have been $261.36) as the annual expense for maintaining its paging units in Lima. The Bureau suggests that this expense item be excluded because of a lack of supporting evidence, there being conflicting evidence as to whether the paging units are repaired by an independent contractor, Lear-Siegler, or in-house. The Bureau points out that United's witness at first testified that the Lima paging units were repaired in-house. Later, he stated that the repairs, except for very minor ones, were performed by Lear-Siegler. According to the Bureau, the cost study should have been revised to reflect this. United responds that the proposed deletion is based on a refusal to accept the evidence of record, not upon a lack of such evidence. As United points out, the only witness testifying on this point explained that the allocation from the pertinent account (Account No. 605, Maintenance, Station Apparatus) used in the study was believed more appropriate than merely including amounts paid to the contract maintenance firm, and that that method would assure inclusion of expenses not covered by the contract, because *all* expenses incurred for maintenance are recorded in Account 605, not just those expenses covered by the contract. The Examiner accepts this evidence in support of the maintenance, Station Apparatus expense item used by United, and rejects the Bureau's position.

[6] This figure is based upon actual costs, rather than upon a cost factor. In particular, United testified that this expense item was determined from the cost of a "set of batteries" which are replaced every six weeks. The cost of an individual battery was stated to average out at $1.54. The $1.16 figure was "roughly two-thirds of the cost of the set of batteries, because we replaced them every six weeks." As the Bureau properly notes, it appears from the foregoing that the battery replacement cost alone would be $1.03 per pager per month. This allows 13 cents per pager per month for postage, envelopes, or maintenance of a customer "carry-in" service. During the course of the hearing, the Ohio Association and Carpenter endeavored to show by means of stamped, previously used but now opened envelopes that postage costs alone were 16 cents per pager, or roughly 10 cents per pager per month. This evidence was excluded, however, since there was no proof as to the contents of these envelopes when they were actually stamped and placed in the mail.

14. United's Cost Study (Exhibit 7, Attachment C) shows a rate of return of .0799. As adjusted above (see footnotes 2 and 5), it would appear that the rate of return is more accurately .0742.

15. None of the parties opposing a grant of these renewal applications offered any evidence concerning costs of operating a radio paging system. Although it might have done so, the Ohio Association offered no data or studies concerning the cost to its members of operating the paging services they furnish. Although it might have done so, Carpenter presented no evidence concerning its costs in connection with the operation of its radio paging service in Lima, Ohio.

The Interconnection Issue

16. The second issue set for hearing in this proceeding concerns United's charges to the miscellaneous common carriers (MCC's) for interconnection with its landline facilities. The rates for such interconnection are not contained in a tariff but were approved by the Public Utilities Commission of Ohio following the filing of joint petitions by the appropriate MCC and United requesting approval thereof. The parties to the United interconnection agreements are: Carpenter Radio Company, Lima, Ohio; Ohio Mobile Telephone Co., Mansfield, Ohio; and Anserphone, Inc., Warren, Ohio. All three agreements contain essentially the same terms and conditions. All three contain a charge of $15.00 per month for interconnection with the landline facilities of United, plus a charge of $1.00 per month per mobile unit to offset switching costs to United.

17. United's interconnection charge of $15.00 per month per interconnection line is based upon the sum of two charges: $12.50 for a one-party business line plus $2.50 per month to compensate for the loss of toll revenues to United by MCC's being able to access the United landline network in some places without paying the appropriate toll rate. The record reveals that United pays nothing to the MCC's for the toll traffic which might be generated by the miscellaneous common carriers' mobile customers. United admits that both the $1.00 per month per mobile unit charge as well as the $2.50 per month loss of revenue charge are mere guesses or judgment factors as to what a charge for those services ought to be, are not based upon an actual cost study, but do represent an attempt to combine costs and value of services.

18. The record reveals that United has raised its one-party business rate from $12.50 to $17.35 without increasing its interconnection charge.

19. The record also contains the testsimony of George M. Perrin of Smith, Bucklin Associates, national representative and executive management director of the National Association of Radio-telephone Systems. Mr. Perrin stated that NARS has an extensive file of interconnection agreements presently in force. The typical arrangement in these, as is also contained in a model agreement worked out between NARS and A. T. & T., provides that the telephone company furnish the first interconnecting line without charge. (Additional lines are furnished for a fee.) In addition, the telephone company charges the MCC $1.00 per month per mobile unit. None of the agreements on file with NARS provides for the $1.00 per month per mobile charge

plus a charge for the first interconnecting line. The Examiner notes, however, that Mr. Perrin indicated he was not satisfied with the terms of the negotiated model agreement.

20. The interconnection agreement between United and Carpenter was executed on April 7, 1968, and remains in effect today. The record reveals, however, that almost as soon as this agreement was signed, Mr. Carpenter expressed dissatisfaction with its terms and refused to supply United with the number of subscribers to his mobile system. Because of this, United has not billed Carpenter for the $15.00 interconnection charge, nor has it billed Carpenter $1.00 per month per mobile unit. Thus, as a result of Carpenter's expressed dissatisfaction, Carpenter interconnects its mobile units with United through a regular business telephone line for which he pays the tariffed monthly rate. In regard to this matter, United insists that as soon as the Carpenters' dissatisfaction was expressed, various officers of the telephone company spoke with Mr. Carpenter and that from time to time draft interconnection agreements were sent to him. Carpenter appears never to have responded in writing. On one occasion, United personnel met with Carpenter at his premises to discuss an agreement Carpenter had drafted. However, on examining that draft, United found that it contained unacceptable provisions concerning division of revenues.

21. In their testimony, Mr. and Mrs. Carpenter went to great lengths to set out the troubled relationship that their company has had with United and its predecessor companies. Large portions of their testimony, however, involved matters more properly before the Public Utilities Commission of Ohio. Much of this was excluded.

22. Mr. Carpenter did testify concerning the adjustments of United's rate schedules which were approved by the Ohio PUC in October 1970. He focused essentially on how these adjustments affected telephone company subscribers who were also subscribers to the Carpenters' telephone answering service. While it was shown that two telephone subscribers ceased being answering service subscribers shortly after the rate adjustments were approved and that one of these subscribers elected to subscribe to United's Code-A-Phone service, there is no evidence in the record tending to show that United engaged in wrongful conduct with respect to the Carpenters' telephone answering service customers.

23. Additionally, Carpenter complained that United allowed workmen and employees of the Western Union Telegraph Company and of burglar alarm companies to connect and disconnect their own equipment on telephone company lines but refused Carpenter the same privilege. The record reveals a valid reason for this disparate treatment, namely, that the facilities furnished to Western Union and to the burglar alarm companies do not connect into the local telephone exchange system or the nationwide toll network, whereas the facilities furnished to Carpenter do.

24. Finally, Carpenter claimed that the telephone company was improperly billing for the service rendered to Carpenter Radio Company, telephone No. 222-9926. As to this, United described in considerable detail the service being furnished to Carpenter Radio Company at that number. From this analysis, it appears that the service

rendered is a standard one-party business service (plus business extensions, speaker-phones, and accessories) for which the basic charge is presently $17.35 and that this is the amount being billed.

CONCLUSIONS

One-way Radio Paging Service

25. The fundamental issue in this proceeding is cross-subsidy, i.e., one service supporting another service. If the cost of providing United's one-way paging service is compensatory, no conclusion can be drawn that it is being subsidized by another service. United's cost study, as modified demonstrates that its charges for one-way paging services at Lima provide sufficient revenue to cover all identifiable actual costs and expenses, cover an appropriate allocation of overhead expenses, and still provide a margin of sufficient amount to provide a compensatory return on net investment of approximately 7½%.

26. The Common Carrier Bureau concedes this. It recommends a one-year renewal, however, conditioned on United's making a complete and accurate study of both its one-way and two-way services in Lima. This, in large measures, is due to the Bureau's view of the manner in which United prepared its case, the Bureau charging United with both carelessness,[7] and a cavalier attitude.[8] Substantively, however, the Bureau proposes only minor adjustments to United's cost study, their total impact changing the stated return by only approximately one percentage point and certainly not justifying a finding that United priced its paging service below cost. Accordingly, it is concluded that, in connection with the rates charged for its one-way radio paging services, United has not engaged in any pricing practices which are anti-competitive or monopolistic, contrary to the public interest standards of the Communications Act, or in violation of any rule, decision, or policy of the Federal Communications Commission.

27. The Examiner recognizes that there are certain areas of controversy between the parties as reflected in footnotes 2 through 6, *supra*, and that there were certain errors in United's calculations. On the whole, however, the latter were corrected during the course of the hearing.[9] Contrary to the Bureau's position, in the Examiner's view, United was extremely cooperative throughout this hearing and evi-

[7] In particular, the Bureau points out that despite the fact that in its interrogatories, Carpenter had asked for the number of United's paging units in service in Lima, United had carelessly combined the data for Lima and Mansfield, reflecting almost twice as many subscribers in Lima as there actually were. This error was admitted and corrected by Mr. O'Connell on the witness stand.

[8] By way of example, the Bureau notes that when asked by Bureau counsel concerning the reason for its loss of customers from 1969 to 1970, United pointed to the economy of the area and "the extreme competition from Carpenter Radio." The latter, states the Bureau, is ludicrous when one considers that although Carpenter has been licensed since 1965, it has never served more than 12 one-way pagers or 16 two-way mobile units. The Examiner notes, however, that the Bureau fails to quote Mr. O'Connell's entire response which referred to the fact that Carpenter does stand as a competitor because it provides more service than United—an answering service and voice or tone pitch.

[9] For instance, in a prehearing pleading, the Bureau called United's attention to the apparent omission from its cost study of the cost of telephone operator services in the one-way paging service in Lima. United responded that operator costs had not been left out, but were included within the $1.74 traffic costs per unit per month contained in the study. On the witness stand, after intensive cross-examination, United agreed that the $1.74 charge was in error. As a result, it later submitted the new study relied upon here (see paragraph 13, *supra*), showing corrected traffic costs amounting to $2.84.

denced a continued effort to make the record as complete and accurate as possible. Illustrative of this is the fact that United presented numerous variations of its original cost study endeavoring to reflect new information and documentation it was able to locate during the course of the hearing, and also striving to take into account objections raised by each and every party. See United Exhibit 7 and its various attachments.

The Interconnection Issue

28. In order to resolve the second issue in this proceeding, it is necessary to determine whether United is charging a premium for a line to connect a miscellaneous common carrier as distinct from ordinary business lines. As indicated in the Findings, above, the record reveals that United's agreements with the MCC's in Lima, Bellefontaine, and Warren, Ohio, are identical and provide for a monthly charge of $15 plus $1.00 per month per mobile unit of the MCC, and that the charge for a one party business line is $17.35 per month. Based upon the foregoing, the only conclusion possible is that United is not charging a premium for interconnect lines as compared with ordinary business lines.

29. It is further specifically concluded that United has provided for the interconnection of Carpenter Radio Company's mobile radio system into the local telephone landline system at Lima, Ohio, on terms and conditions comparable to those it provides for other mobile radio systems in other Ohio communities. The only difference in treatment as between Carpenter and the other mobile radio systems interconnected with United is that, in deference to Mr. Carpenter's dissatisfaction, United has not insisted on payment in accordance with the terms of their April 1968 agreement. There is no basis in this record for concluding that the failure to resolve Carpenter's differences with United stemmed from any wrongful conduct on the part of United.

30. Accordingly, it is concluded that, in connection with the rates charged to miscellaneous common carriers and others for interconnection with its landline facilities, United has not engaged in any pricing practices which are anti-competitive or monopolistic, in violation of any provision of the Communications Act or contrary to the public interest standard thereof, or in violation of any rule, decision, or policy of the Federal Communications Commission. This being so, there is no need for the Commission to prescribe an interconnection charge pursuant to Section 201(a) of the Communications Act, 47 U.S.C. 201(a).

31. In reaching these conclusions, the Examiner has been mindful of the fact that this proceeding involves two specific issues—United's pricing practices in its one-way paging service and its interconnection practices generally—nothing more. As indicated in the findings above, during the course of the hearing, both Mr. and Mrs. Carpenter testified on behalf of the Carpenter Radio Company. Most of the testimony they sought to introduce was excluded because it involved matters beyond the scope of this hearing. Nonetheless, their troubled relationship with United and its predecessor companies going back to at least 1965 is spread upon this record. Although the Examiner is here granting United's applications for renewal, United is admonished that con-

sidering its size, resources,[10] and strategic position in control of the landline network, it behooves United to act prudently and to use its great power wisely. Wireline carriers must "honor the spirit as well as the letter of the conditions" imposed upon them. *Guardband Proceeding*, 12 FCC 2d 841 (1968), recon. den. 14 FCC 2d 269, 271 (1969).

32. Finally, it is recognized that a great deal of United's problems in itemizing its actual costs stem from the fact that when it took over the facilities of its predecessors, it inherited their rates and charges and equipment. It is also recognized that if United wishes to continue in the mobile service in Lima, it will probably replace much of its central office and station equipment in the near future. When this occurs, United will be in a position to make a complete and accurate cost study so that it may adequately support its charges to the public for both one-way signaling and two-way radio telephone service in Lima.

33. In light of the foregoing, it is concluded that a grant of United's renewal applications will serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That, unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Decision on its own motion in accordance with the provisions of Rule 1.276, the applications for renewal of license filed by United Telephone Company of Ohio for Radio Common Carrier Stations KQA459 and KQA651 in the Domestic Public Land Mobile Radio Service at Lima, Ohio and Bellefontaine, Ohio, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
LENORE G. EHRIG, *Hearing Examiner.*

[10] United's operating revenues for 1970 were almost $60 million according to its Annual Report, FCC Form M, for the year ending December 31, 1970.

FCC 74-480

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of
WARWICK ELECTRONICS, INC.
Concerning Waiver of Comparable Television Tuning Rules

MAY 8, 1974.

JOSEPH R. MARCUS, Esq.,
Arnstein, Gluck, Weitzenfeld & Minow,
120 South La Salle Street,
Chicago, Ill. 60603

DEAR MR. MARCUS: This is in response to your letter of April 4, 1974, submitted on behalf of Warwick Electronics, Inc., concerning waiver of the comparable television tuning rules to permit shipment of a maximum of 6000 units of three receiver models to be produced between July 1 and September 30, 1974. A waiver of the 100% compliance requirement, effective July 1, 1974, is required because the receivers would combine a detented VHF tuner with a continuous UHF tuner.

In support of the request for waiver, you state that Warwick had planned to assemble these receivers prior to the July 1, 1974 effective date of the 100% compliance requirement; that all components for these receivers are in inventory or are being shipped except for the UHF tuners; that the tuners were ordered in December 1973, for delivery by May 1, 1974; and that the tuner manufacturer now states that it is unable to meet this request. For these reasons, Warwick will be unable to assemble up to 6000 units prior to July 1 and needs an extension to September 30, 1974.

From the foregoing, it appears that Warwick took steps which would ordinarily have been necessary to assure that the receivers in question were assembled prior to July 1, 1974 and thus to assure compliance with the comparable television tuning rules. Warwick appears to have acted in good faith with regard to its partial failure to meet the July 1, 1974 deadline. In these circumstances, waiver of the comparable tuning rules is justified. Accordingly, Warwick Electronics, Inc. is hereby authorized to ship a maximum of 6000 units of three non-comparable television receiver models (model numbers 528.-41670315, 528.41682226, and 528.41104400) to be produced between July 1 and September 30, 1974.

Commissioner Quello not participating.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74R-202

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
THE WESTERN CONNECTICUT BROADCASTING CO. (WSTC), STAMFORD, CONN.	Docket No. 19872 File No. BR-1150
For Renewal of License	
RADIO STAMFORD, INC., STAMFORD, CONN.	Docket No. 19873 File No. BP-19162
For Construction Permit	

MEMORANDUM OPINION AND ORDER

(Adopted May 29, 1974; Released May 31, 1974)

BY THE REVIEW BOARD: BOARD MEMBER PINCOCK ABSENT.

1. By Memorandum Opinion and Order, 44 FCC 2d 673, released November 21, 1973, the Commission designated the above-captioned applications for hearing on three issues, one of which is to determine "the facts and circumstances relating to trade practices engaged in by Donahue Sales Corporation which resulted in the issuance by the Federal Trade Commission of a consent order in Docket No. C-1713 and whether such practices reflect upon the basic and/or comparative qualifications of Radio Stamford, Inc. to be a licensee of the Commission." [1] Now before the Board is a motion to enlarge issues, filed February 7, 1974, by The Western Connecticut Broadcasting Company (WSTC) (Western), which requests a Rule 1.65/Rule 1.514 issue against Radio Stamford, Inc. (Radio Stamford) and an issue "to determine the facts and circumstances surrounding a suit by Pioneer Company, Inc., against Talon, Inc. and Donahue Sales Corporation, filed in the United States District Court for the District of Minnesota, 3rd Division, Civil Action No. 3-68-236." [2]

2. Western's motion is based upon information contained in a peti-

[1] The grounds for specifying the issue were stated by the Commission as follows: "The president and largest single stockholder (22 percent) of Radio Stamford is Alphonsus J. Donahue, formerly president of Donahue Sales Corporation. That company is now a division of Textron, Inc., and is managed by Mr. Donahue. On March 25, 1970, the Federal Trade Commission in Docket No. C-1713 [77 FTC 304], issued a consent order directing Donahue Sales Corporation to cease and desist from engaging in certain price-fixing practices in connection with the sale of packaged zippers, spooled thread, and other products for the home sewing market. Attached to the order was a complaint alleging specific violations of Federal Trade Commission Act (Title 15 U.S.C. § 41). The complaint was drafted by the Bureau of Restraint of Trade and would have been presented to the F.T.C. for adoption had not Donahue Sales Corporation entered into the consent agreement. Although this Commission is not charged with the enforcement of anti-trust laws, if an applicant or a principal thereof has been involved in unlawful practices, an analysis of the substance of these practices must be made in order to determine the ability of the applicant to use the proposed facilities in the public interest. *Uniform Policy as to Violation by Applicants of Laws of the United States*, 1 RR 91:495 (1951). Thus, in keeping with our long-standing policy, an appropriate issue will be included."

[2] Also before the Board are the following related pleadings: (a) comments, filed February 20, 1974, by the Broadcast Bureau; (b) opposition, filed March 11, 1974, by Radio Stamford; and (c) reply, filed April 19, 1974, by Western.

tion for leave to amend, filed by Radio Stamford on January 24, 1974.[3] The amendment reveals for the first time the existence of a civil antitrust suit filed on August 28, 1968, by Pioneer Company, Inc. against Talon, Inc. (Talon) and Donahue Sales Corporation. Alphonsus J. Donahue, Radio Stamford's president and principal stockholder, is manager of Donahue Sales Corporation. See note 1, *supra*. The petition to amend discloses that this civil suit alleged that Talon and Donahue Sales Corporation conspired to fix and maintain prices in violation of the Sherman Antitrust Act, but that the action was dismissed on September 15, 1971, was reversed and remanded in June, 1972, by the United States Court of Appeals for the Eighth Circuit,[4] and ultimately "settled" on August 8, 1973. Although Western acknowledges that the petition to amend also stated that the civil suit arose out of the same circumstances surrounding the FTC consent order (see paragraph 1 and note 1, *supra*), Western argues that, because Radio Stamford has not divulged the substance of the suit in greater detail, an issue is necessary in order to make an in-depth inquiry at the hearing, citing the Commission's 1951 *Report on Uniform Policy as to Violation by Applicants of Laws of the United States*, 1 RR Part III, 91:495. In short, Western argues that separate issues are required to fully develop the circumstances surrounding each proceeding. Western also argues that Radio Stamford's failure to timely report the suit requires addition of a Rule 1.65/Rule 1.514 issue, citing *Southern Broadcasting Co.*, 38 FCC 2d 461, 25 RR 2d 1138 (1972).

3. The Broadcast Bureau, in its comments, urges that, if the civil suit arose out of the same facts and circumstances as the FTC consent order, then the issue as presently framed is sufficient. The Bureau does, however, support addition of a Rule 1.65/1.514 issue, but, in view of all the circumstances, believes that it should be limited to Radio Stamford's comparative qualifications.

4. In opposition, Radio Stamford concedes that the civil suit was filed nearly three and one-half years before the filing of its application in this proceeding, but contends that the failure to report the civil suit was solely the result of "inadvertence", rather than any intent to deceive the Commission.[5] Radio Stamford also states that the FTC consent order and the civil suit arose out of the "identical" factual situation [6] and that it did timely report the consent order in its application. Therefore, argues Radio Stamford, no additional inquiry into the civil suit is required. Radio Stamford opposes addition of a Rule 1.65/1.514 issue on the grounds that it voluntarily reported both proceedings, that the January 24th amendment was filed immediately upon discovering the inadvertent omission, and that there clearly was no motive to conceal, citing *Gilroy Broadcasting Co., Inc.*, 42 FCC 2d 730, 28 RR 2d 428 (1973); and *Auburn Publishing Company*, 34 FCC 2d 134, 24 RR 2d 29 (1972). In reply, Western reiterates its belief that issues are required to assure that all the facts surrounding the civil suit and the failure to timely report can be explored at the hearing.

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[3] This amendment was accepted by the Presiding Judge, by Order, FCC 74M-222, released March 5, 1974.

[4] *Pioneer Co., Inc.* v. *Talon, Inc.*, 462 F. 2d 1106 (8th Cir. 1972).

[5] In support, Radio Stamford attaches to its opposition the affidavit of its president, Alphonsus Donahue.

[6] Attached to Radio Stamford's opposition is a copy of the FTC complaint and order and a copy of the Eighth Circuit's opinion in the Pioneer suit.

5. The Review Board will deny the requested issues.[7] As stated in the designation Order in this proceeding, *supra*, the Commission is not charged with the enforcement of anti-trust laws; rather, the Commission is obligated to analyze the substance of any unlawful practice of an applicant or principal thereof in order to determine the ability of the applicant to operate the proposed facilities in the public interest. See *Report on Uniform Policy*, *supra*. See also *Southern Broadcasting Co.*, *supra*. There is already an issue in this proceeding inquiring into the facts and circumstances of any possible anti-trust violations by Donahue Sales Corporation. Western offers nothing but speculation to rebut Radio Stamford's and Alphonsus Donahue's statements that the FTC consent order and the Pioneer civil suit arose out of the same facts. Therefore, there is no need for another issue inquiring into the same matters. Next, as to the requested Rule 1.65 and/or 1.514 issue, the Board believes that no purpose would be served by addition of an issue, either on a qualifying or comparative basis. Since it appears that the FTC and court proceedings are premised on the same facts, it follows that Radio Stamford had no possible motive for concealment of the civil suit from the Commission. Furthermore, Donahue's sworn affidavit indicates that the failure to report was inadvertent, and Western has not shown otherwise. While the suit itself and the eventual outcome of it should have been reported in Radio Stamford's application, the Board considers it most significant that Radio Stamford voluntarily reported it subsequently in its January amendment.[8] As stated in *Auburn*, *supra*, 34 FCC 2d at 137, 24 RR 2d at 32, "[t]he Board has frequently refused to specify a Section 1.65 issue where, as here, the violation was unintentional and there was no attempt to mislead or conceal, no pattern of violations has been shown, and the violation was of questionable significance." See also *Gilroy Broadcasting Co., Inc.*, *supra; Harvit Broadcasting Corp.*, 32 FCC 2d 656, 23 RR 2d 328 (1971); and *Media Inc.*, 22 FCC 2d 486, 18 RR 2d 970 (1970).

6. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed February 7, 1974, by The Western Connecticut Broadcasting Company, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

[7] Neither Radio Stamford nor the Bureau objects to the motion on the ground that it is untimely filed and the Board is persuaded that good cause has been shown for the late filing.

[8] Compare *Southern Broadcasting Co., supra*, which is mistakenly relied upon by Western. In the Board's opinion, the circumstances in the *Southern* case are sufficiently distinguishable from those in this case to warrant denial of the requested issue.

FCC 74R-193

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
THE WESTERN CONNECTICUT BROADCASTING CO. (WSTC), STAMFORD, CONN.	Docket No. 19872
For Renewal of License	File No. BR-1150
RADIO STAMFORD, INC., STAMFORD, CONN.	Docket No. 19873
For Construction Permit	File No. BP-19162

MEMORANDUM OPINION AND ORDER

(Adopted May 23, 1974; Released May 24, 1974)

BY THE REVIEW BOARD:

1. This case was designated for hearing on November 21, 1973,[1] and at that time Radio Stamford's application, as amended, showed Edmund W. Davis to be a director, an 11% stockholder (subscribing to five shares of stock) and the proposed Special Assistant for news, public affairs and minority community. Western Connecticut Broadcasting Company now charges, in a petition to enlarge issues,[2] that Radio Stamford's application has not been amended to reveal changes in the corporate status of Mr. Davis.

2. The facts, as they are revealed by the pleadings, are that on February 12, 1974, Mr. Davis stated in a letter to the president of Radio Stamford, that it was necessary for him to resign as a director "effective immediately." He indicated a willingness to relinquish or retain his stock, depending on how the corporation felt about that. This resignation was not accepted by the corporation until April 30, 1974, at which time Mr. Nathaniel Dickerson was elected a director and assigned the duties to have been performed by Mr. Davis. Mr. Dickerson also became a stock subscriber, but Mr. Davis retained a stock interest in the applicant. None of the facts detailed in this paragraph were reported to the Commission until May 2, 1974, the date on which Radio Stamford filed its opposition to the instant petition; they were also reported in an amendment filed with the Presiding Judge.

3. The Board agrees that a Section 1.65 issue should be specified. Radio Stamford's excuse for the long delay in reporting the changes are not persuasive. In view of Mr. Davis' statement that he was resigning as director "effective immediately", the applicant had the obligation to act promptly if it wished to avoid the consequences of its failure to do so. While unavailability of Radio Stamford's local counsel may have been partially responsible for the delay, it does not account for

[1] FCC 73-1186, adopted November 14 and released November 21, 1973.
[2] The petition was filed on April 12, 1974. On May 2, 1974, Radio Stamford filed an opposition and the Broadcast Bureau filed comments, and Western Connecticut submitted its reply on May 14, 1974.

all of it. Indeed, it appears that most of the decisions that have just recently been reported had been made, in all but the execution of the formalities, as early as the middle of March. On March 11 one of applicant's principals signed an affidavit in which Mr. Dickerson was referred to as a director and special assistant with the duties previously assigned to Mr. Davis. Thus, the Board will add a Section 1.65 issue, but only on a comparative basis since the facts do not demonstrate an intent to conceal.

4. Petitioner has also sought a misrepresentation and concealment issue against Radio Stamford. Misrepresentation and concealment is alleged because Mr. Davis' resignation was not reported to the Commission shortly after it occurred, but the Board does not agree, under the circumstances related in the opposition, that the failure to report stemmed from a desire to mislead the Commission or conceal facts from it. An issue is also requested to determine whether Radio Stamford has failed to comply with an Order of the Presiding Judge. The Board will not rule on the merits of this question, believing that this is a matter for the Judge's determination, initially at least.

5. Accordingly, IT IS ORDERED, That the petition to enlarge issues filed by The Western Connecticut Broadcasting Company on April 12, 1974, IS GRANTED to the extent that the issues are enlarged to include the following:

> To determine whether Radio Stamford, Inc., has failed to comply with the provisions of Section 1.65 of the Commission's Rules, and, if so, the effect thereof on that applicant's comparative qualifications.

6. IT IS FURTHER ORDERED, That in all other respects the petition to enlarge issues IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-496

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
WKBC CABLEVISION, INC., NORTH WILKESBORO, N.C.	CAC-1363 NC058
WKBC CABLEVISION, INC., WILKESBORO, N.C.	CAC-1626 NC076
WKBC CABLEVISION, INC., UNINCORPORATED PORTIONS OF WILKES COUNTY ADJACENT TO WILKESBORO AND NORTH WILKESBORO	CAC-3665 NC105
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted May 14, 1974; Released May 22, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. WKBC Cablevision, Inc., has submitted a petition for reconsideration of our action in *WKBC Cablevision, Inc.*, FCC 74-94, 45 FCC 2d 237 (1974), in which the Commission denied applications for certificates of compliance filed by WKBC to operate cable television systems in the above-captioned communities. In that action, we determined that various sections of the franchises were inconsistent with Section 76.31 of our Rules: (a) franchise fees amounting to 5 percent of gross annual subscriber revenues were charged without an adequate justification, contrary to Section 76.31(b) of the Commission's Rules, and (b) no franchise was submitted for the unincorporated areas of Wilkes County to be served.

2. In support of its petition, WKBC has submitted franchises for Wilkesboro and North Wilkesboro which have been amended to require franchise fees of 3 percent of gross annual subscriber revenues, consistent with Section 76.31(b), and a separate franchise, granted by the Board of Commissioners of Wilkes County and fully consistent with Section 76.31, for unincorporated portions of Wilkes County. WKBC proposes to offer its subscribers the following television broadcast signals:

WXII (NBC, channel 12), Winston-Salem, North Carolina
WBTV (CBS, channel 3), Charlotte, North Carolina
WSOC-TV (NBC, channel 9), Charlotte, North Carolina
WJHL-TV (CBS, channel 11), Johnson City, Tennessee
WKPT-TV (ABC, channel 19), Kingsport, Tennessee
WCYB-TV (NBC, channel 5), Bristol, Virginia
WGHP-TV (ABC, channel 8), High Point, North Carolina
WHKY-TV (independent, channel 14), Hickory, North Carolina
WUNL-TV (educational, channel 26), Winston-Salem, North Carolina

Carriage of these signals is consistent with Section 76.59 of the Rules.

3. WKBC has corrected the noted deficiencies in its franchises, and we will grant its applications; however, several matters merit discussion. WKBC states that it is within the specified zone of Television Broadcast Station WHKY, but that because the station does not place a Grade B signal over the proposed franchise area, "a system-acceptable signal may not be available." Lest our silence on this matter be misconstrued, we note that WHKY is a signal which must be carried on request of the station. Any relief from this provision could only come upon a petition filed in accordance with Section 76.7. Secondly, the franchise for Wilkes County provides, at Section 7, "[c]onstruction of a CATV system shall commence within a year after a certificate of compliance is issued . . . in areas contiguous to the corporate limits of Wilkesboro and North Wilkesboro where the density of homes is sixty (60) per mile or greater." We have previously stated our concern that line extension policies be equitable and reasonable for all parts of a community, and that any exclusions be non-discriminatory and knowledgeably arrived at by the franchising authority. *Greater Milford Cable Antenna*, FCC 74–158, 45 FCC 2d 311 (1974); *Clarification of Cable Television Rules*, paras. 67–71, FCC 74–384, —— FC 2d —— (1974). Since the franchise award was as a result of a full public proceeding affording due process, and since the franchise document indicates that it was widely posted in the county, we will defer to local judgment and accordingly find the line extension policy reasonable on its face.

4. Finally, all three franchises provide that they "shall expire fifteen (15) years after the effective date hereof, unless sooner terminated . . . provided that [if] the Grantee has complied with the provisions hereof and has made all payments due hereunder, the Grantee shall have the privilege of renewing this franchise for an additional period of five (5) years. . . ." The respective franchising authorities have assured us, by letter, that the provisions are interpreted as requiring a full public proceeding affording due process prior to the approval of a renewal. In these circumstances, we find the sections consistent with Section 76.31(a)(3).

In view of the foregoing, the Commission finds that reconsideration of the denial of applications for certificates of compliance (CAC–1363, CAC–1626) filed by WKBC Cablevision, Inc., and grant of the application for Wilkes County (CAC–3665) would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Reconsideration" and "Application for Certificate of Compliance" (CAC–3665), filed March 15, 1974, by WKBC Cablevision, Inc., ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*